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This public document was published at a total cost of \$2,700. Five hundred copies of this public document were published in this monthly printing at a cost of \$2,700. The total cost of all printings of this document including reprints is \$2,700. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 49:981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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# Executive Orders

## EXECUTIVE ORDER BJ 10-20

Bond Allocation—Jefferson Parish Finance Authority  
Amend Executive Order No. BJ 09-18

WHEREAS, Executive Order No. BJ 2009-18, issued on November 20, 2009, granted an allocation from the 2009 Ceiling in the amount of \$30,000,000 to the Jefferson Parish Finance Authority for Single Family Mortgage Revenue Bonds; and

WHEREAS, it is necessary to amend Executive order No. BJ 2009-18, to extend the date of delivery of bonds to the initial purchasers;

NOWTHEREFORE, I, BOBBY JINDAL, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 3 of Executive order No. BJ 2009-18, issued on November 20, 2009, is amended as follows:

The allocation granted herein shall be valid and in full force and effect through December 31, 2009, provided that such bonds are delivered to the initial purchasers thereof on or before December 23, 2009.

SECTION 2: All other sections, subsections, and paragraphs of Executive Order No. BJ 2009-18, issued on November 20, 2009, shall remain in full force and effect.

SECTION 3: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 15th day of December, 2009.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
1001#075

## EXECUTIVE ORDER BJ 10-21

Executive Branch—Expenditure Reduction

WHEREAS, pursuant to R.S. 39:75(A)(1), the Division of Administration is directed to submit a monthly budget status report to the Joint Legislative Committee on the Budget (hereafter "Committee") indicating the balance of the budget for the State General Fund and dedicated funds by comparing the official forecast for these funds to the total authorized appropriations from each fund; once approved by the Committee, the most recent budget status report becomes the official budget status of the State;

WHEREAS, if the most recently approved budget status report indicates that the total appropriation from any fund will exceed the official forecast for that fund, R.S. 39:75(B) requires the Committee to immediately notify the Governor that a projected deficit exists for that fund;

WHEREAS, by letter dated December 18, 2009, the Committee notified the Governor that it approved a budget status report at its December 18, 2009, meeting, indicating a projected deficit of two hundred forty-seven million, nine hundred eleven thousand, nine hundred ten dollars (\$247,911,910) exists in the State General Fund for Fiscal Year 2009-2010, based on the revised official forecast of revenue available for appropriation adopted by the Revenue Estimating Conference on December 17, 2009, compared to total appropriations;

WHEREAS, once notified that a projected deficit exists, pursuant to Article VII, Section 10 of the Constitution of Louisiana and R.S. 39:75(C)(1)(a), the Governor has interim budget balancing powers to adjust the budget, including the authority to reduce appropriations for the Executive Branch of government for any program that is appropriated from a fund that is in a deficit posture, not exceeding three percent (3%) in the aggregate of the total appropriations for each Budget Unit for the fiscal year, and if the Governor does not make necessary adjustments in the appropriations to eliminate the projected deficit within thirty (30) days of the determination of the projected deficit in a fund, R.S. 39:75(D) mandates the Governor call a special session of the Louisiana Legislature for that purpose;

WHEREAS, as authorized by R.S. 39:75(C)(1)(a), I am exercising my unilateral interim budget balancing powers to reduce the projected deficit by \$247,911,910, resulting in a less than 1% reduction in the total appropriation for the State;

WHEREAS, the allocation of the reductions are across the board to all Budget Units within the scope of my unilateral interim budget balancing powers resulting in the lesser of either a 7.56% reduction of the State General Fund or a 3% reduction of the total appropriation for each Budget Unit; and

WHEREAS, as authorized by R.S. 39:75(C)(3), my Executive Order may utilize all or a portion of the General Fund dollar savings objective specified in Executive Order BJ 2009-11.

NOW THEREFORE, I, Bobby Jindal, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The following departments, agencies, and/or Budget Units (hereafter "Unit" and/or "Units") of the Executive Branch of the State of Louisiana, as described in and/or funded by appropriations through Acts 10, 40, and 122 of the 2009 Regular Session of the Louisiana Legislature (hereafter "the Acts"), shall reduce expenditure of funds appropriated to the Unit from the State General Fund by the Acts, in the amounts shown below:

Act 10 and Act 122-General Operating Appropriations Act:

<b>State General Fund</b>	
<b>Schedule 01-Executive Department</b>	\$ 7,740,854
<b>Schedule 03-Veterans Affairs</b>	\$ 637,278
<b>Schedule 04-Elected Officials</b>	
04-139 Secretary of State	\$ 1,632,209
04-141 Office of Attorney General	\$ 619,232
04-146 Lieutenant Governor	\$ 122,053
04-147 State Treasurer	\$ 46,881
04-160 Agriculture and Forestry	\$ 1,554,442
<b>Schedule 05-Economic Development</b>	\$ 1,714,480
<b>Schedule 06-Culture, Recreation and Tourism</b>	\$ 2,188,047
<b>Schedule 07-Transportation and Development</b>	\$ 132,296
<b>Schedule 08B-Public Safety Services</b>	\$ 2,740,923
<b>Schedule 09-Health and Hospitals</b>	\$108,056,551
<b>Schedule 10-Social Services</b>	\$14,129,547
<b>Schedule 11-Natural Resources</b>	\$ 375,881
<b>Schedule 12-Revenue</b>	\$ 1,060,656
<b>Schedule 13-Environmental Quality</b>	\$ 321,667
<b>Schedule 14-Workforce Commission</b>	\$ 137,514
<b>Schedule 16-Wildlife and Fisheries</b>	\$ 7,561
<b>Schedule 17-Civil Service</b>	
17-562 Ethics Administration	\$ 127,407
17-563 State Police Commission	\$ 19,671
17-564 Division of Administrative Law	\$ 29,306
<b>Schedule 19A-Higher Education</b>	\$83,961,506
<b>Schedule 19B-Special Schools and Commissions and 19D-Education</b>	\$16,077,548
<b>Schedule 19E-LA Health Care Services Division</b>	\$ 2,454,084
<b>Schedule 20-Other Requirements</b>	
20-906 District Attorneys & Assistant District Attorneys	\$ 913,868
20-909 LA Health Insurance Association	\$ 60,000
20-933 Governor's Conferences and Interstate Compacts	\$ 16,000
20-945 State Aid to Local Government Entities	\$ 1,034,447

**SECTION 2:**

A. No later than January 8, 2010, the head of each Unit listed in Section 1 of this Order shall submit to the Commissioner of Administration (hereafter "Commissioner") a mid-year budget reduction plan, on the BA-7 form and questionnaire, which reflects the Unit's proposed allocation of the expenditure reduction ordered in Section 1 of this Order (hereafter "midyear budget reduction plan"), and a description of the methodology used to formulate the mid-year budget reduction plan. The heads of each department shall exercise discretion to allocate the aggregate reduction within the department to maximize recurring savings to the State for future fiscal years, while remaining in compliance with R.S. 39:75(C)(1)(a) by ensuring that no reduction to any Budget Unit exceeds 3% of the total appropriation of that Budget Unit.

B. In the event that positions of employment will be affected by the midyear budget reduction these positions should be included in a Unit's midyear budget reduction plan.

C. No Unit shall implement the expenditure reduction mandated by Section 1 of this Order without the Commissioner's prior written approval of the Unit's mid-year budget reduction plan.

D. After the Commissioner has given approval of a Unit's mid-year budget reduction plan, any change to the mid-year budget reduction plan requires prior written approval from the Commissioner.

**SECTION 3:** The Commissioner of Administration is authorized to develop additional guidelines as necessary to facilitate the administration of this Order.

**SECTION 4:** All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

**SECTION 5:** This Order is effective upon signature and shall remain in effect through June 30, 2010, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 22nd day of December 2009.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
1001#076

**EXECUTIVE ORDER BJ 10-01**

Rescinding Executive Orders BJ 08-48 and BJ 08-52

WHEREAS, the limited duties and responsibilities of the Louisiana Wild Caught Shrimp Industry Trade Action Advisory Council, as established by Executive Order No. BJ 2008-48 dated August 22, 2008, are included within the broader scope and authority of the recently created Louisiana Shrimp Task Force, which has a comprehensive mission to examine the shrimp industry, identify areas of concern or problems endemic to the industry, and to develop plans and propose policies which can improve the economic sustainability of the industry;

WHEREAS, the E-Rate Oversight Committee, as established by Executive Order No. BJ 2008-52 dated August 22, 2008, was created in order to facilitate the application process for the disbursement of federal E-Rate Hurricane Katrina Relief Funding for Louisiana schools and libraries to access in order to rebuild their technology infrastructures, and this federal funding has now been fully utilized; and

WHEREAS, it is proper to terminate the Louisiana Wild Caught Shrimp Industry Trade Action Advisory Council and E-Rate Oversight Committee and their respective responsibilities as they are no longer needed to administer the tasks they were created for;

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Executive Order No. BJ 2008-48 dated August 22, 2008 and Executive Order No. BJ 2008-52 dated August 22, 2008 are hereby terminated and rescinded.

SECTION 2: This Order is effective upon signature and shall continue in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the Capitol, in the City of Baton Rouge, on this 7th day of January, 2010.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
1001#077

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments  
Low Income and Needy Care Collaboration  
(LAC 50.V.2503 and 2713)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50.V.2503 and adopt LAC.V.2713 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the disproportionate share hospital (DSH) payment methodology in LAC 50.V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department now proposes to amend the provisions governing disproportionate share hospital payments to provide for a supplemental payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients.

This action is being taken to secure new federal funding and to promote the public health and welfare of uninsured individuals by assuring that hospitals are adequately reimbursed for furnishing uncompensated care. It is estimated that the implementation of this Emergency Rule will be budget neutral for state fiscal year 2009-10 since it is a public-private collaboration.

Effective January 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments to provide for a supplemental payment to hospitals that participate in the Low Income and Needy Care Collaboration.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Medical Assistance Program—Hospital Services

##### Subpart 3. Disproportionate Share Hospital Payments

#### Chapter 25. Disproportionate Share Hospital Payment Methodologies

##### §2503. Disproportionate Share Hospital Qualifications

A. - A.5. ...

6. effective September 15, 2006, be a non-rural community hospital as defined in §2701.A;

7. effective January 20, 2010, be a hospital participating in the Low Income and Needy Care Collaboration as defined in §2713.A; and

8. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### Chapter 27. Qualifying Hospitals

##### §2713. Low Income and Needy Care Collaboration

###### A. Definitions

*Low Income and Needy Care Collaboration Agreement*—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

B. In order to qualify under this DSH category in any period, a hospital must be party to a Low Income and Needy Care Collaboration Agreement with the Department of Health and Hospitals in that period.

C. DSH payments to Low Income and Needy Care Collaborating Hospitals shall be calculated as follows.

1. In each quarter, the department shall divide hospitals qualifying under this DSH category into two pools. The first pool shall include hospitals that, in addition to qualifying under this DSH category, also qualify for DSH payments under any other DSH category. Hospitals in the first pool shall be eligible to receive DSH payments under §2713.C.2 provisions. The second pool shall include all other hospitals qualifying under this DSH category. Hospitals in the second pool shall be eligible to receive DSH payments under §2713.C.3 provisions.

2. In each quarter, to the extent the department appropriates funding to this DSH category, hospitals that qualify under the provisions of §2713.C.2 shall receive 100 percent of the total amount appropriated by the department for this DSH category.

a. If the net uncompensated care costs of these hospitals exceed the amount appropriated for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing the hospital's net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.2 and multiplying by the amount appropriated by the department.

b. If the amount appropriated for this DSH category exceeds the net uncompensated care costs of all hospitals qualifying under §2713.C.2, payment shall be made up to each hospital's net uncompensated care costs.

c. Any amount available after all distributions are made under §2713.C.2 provisions shall be distributed subject to the provisions in §2713.C.3.

3. In each quarter, to the extent distributions are available, and after all distributions are made under §2713.C.2 provisions, distributions under §2713.C.3 provisions shall be made according to the following terms.

a. If the net uncompensated care costs of all hospitals qualifying for payment under §2713.C.3 provisions exceed the amount available for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing its net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.3.

b. If the amount available for payments under §2713.C.3 exceeds the net uncompensated care costs of all qualifying hospitals, payments shall be made up to each hospital's net uncompensated care costs and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

D. In the event it is necessary to reduce the amount of disproportionate share payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under the provisions of §2713.C.3.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.3 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department will reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

E. After the reduction in §2713.D has been applied, if it is necessary to further reduce the amount of DSH payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under §2713.C.2.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.2 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department shall reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

E. Qualifying hospitals must submit costs and patient specific data in a format specified by the department. Costs and lengths of stay will be reviewed for reasonableness before payments are made.

F. Payments shall be made on a quarterly basis, however, each hospital's eligibility for DSH and net uncompensated care costs shall be determined on an annual basis.

G. Payments to hospitals qualifying under this DSH category shall be made subsequent to any DSH payments for which a hospital is eligible under another DSH category.

H. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category,

shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit. The remaining payments shall be redistributed to the other hospitals in accordance with these provisions.

I. If the amount appropriated for this DSH category exceeds the specific DSH limits of all qualifying hospitals, payment will be made up to each hospital's specific DSH limit and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#023

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments  
Non-Rural Community Hospitals  
(LAC 50.V.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing disproportionate share hospital (DSH) payments to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-08 may also qualify in the federally mandated statutory hospital category, and to revise the definition of a non-rural community hospital (*Louisiana Register*, Volume 34, Number 11). In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the department promulgated an

Emergency Rule to amend the provisions governing disproportionate share hospital payments to reallocate any remaining funds from the fiscal year 2009 DSH appropriation to non-rural community hospitals and issue a supplemental payment to these hospitals for their uncompensated care costs (*Louisiana Register*, Volume 35, Number 7).

Act 10 of the 2009 Regular Session of the Louisiana Legislature directed the department to amend the DSH qualifying criteria and payment methodologies for non-rural community hospitals. In compliance with Act 10, the department now proposes to amend the provisions of the June 26, 2009 Emergency Rule governing supplemental DSH payments to non-rural community hospitals. This action is being taken to promote the public health and welfare of uninsured individuals and to ensure their continued access to health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care. It is estimated that the implementation of this Emergency Rule will increase expenditures in the Medicaid Program by \$69,000,000 for state fiscal year 2009-10.

Effective January 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the June 26, 2009 Emergency Rule governing disproportionate share hospital payments to non-rural community hospitals.

#### **Title 50**

#### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Medical Assistance Program—Hospital Services**

#### **Subpart 3. Disproportionate Share Hospital Payments**

#### **Chapter 27. Qualifying Hospitals**

#### **§2701. Non-Rural Community Hospitals**

A. ...

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 10 of the 2009 Regular Session of the Louisiana Legislature, and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1 may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications.

C. Repealed.

1. Repealed.
2. Repealed.
3. Repealed.

C. Private, non-rural community hospitals (other than freestanding psychiatric hospitals) shall be reimbursed as follows:

1. If the hospital's qualifying uninsured cost is less than 3.5 percent of total hospital cost, no payment shall be made.

2. If the hospital's qualifying uninsured cost is equal to or greater than 3.5 percent of total hospital cost, but less than 6.5 percent, the payment shall be 50 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 3.5 percent of total hospital cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 6.5 percent of total hospital cost, but less than or equal to 8 percent, the payment shall be 80 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 3.5 percent of total hospital cost.

4. If the hospital's qualifying uninsured cost is greater than 8 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 8 percent of total hospital cost and 80 percent of an amount equal to 4.5 percent of total hospital cost.

C.5. - E. ...

F. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. The \$35,000,000 appropriation for the non-rural community hospital pool shall be effective only for state fiscal year 2010 and distributions from the pool shall be considered nonrecurring.

G. Of the total appropriation for the non-rural community hospital pool, \$12,000,000 shall be allocated to public and private non-rural community hospitals with a distinct part psychiatric unit and freestanding psychiatric hospitals.

1. To qualify for this payment hospitals must have uninsured cost as defined in §2701.C.5 equal to or greater than 3.5 percent of total hospital cost and:

- a. be a public or private non-rural community hospital, as defined in §2701.A. that has a Medicaid enrolled distinct part psychiatric unit; or
- b. enrolled in Medicaid as a freestanding psychiatric hospital that pursuant to 42 CFR 441.151 is accredited by the Joint Commission on the Accreditation of Healthcare Organizations.

2. Payment shall be calculated by:

- a. dividing each qualifying hospital's distinct part psychiatric unit's uninsured days by the sum of all qualifying psychiatric unit qualifying uninsured days and multiplying by \$7,000,000;
- b. dividing each qualifying freestanding psychiatric hospital's uninsured days by the sum of all qualifying freestanding psychiatric hospital qualifying uninsured days and multiplying by \$5,000,000.

H. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:2402 (November 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#024

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Low Income and Needy Care Collaboration  
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions which established the prospective reimbursement methodology for inpatient hospital services rendered in private (non-state) acute care general hospitals (*Louisiana Register*, Volume 20, Number 6).

In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state hospitals that demonstrated substantial financial and operational challenges in the aftermath of Hurricanes Katrina, Rita, Gustav and Ike (*Louisiana Register*, Volume 35, Number 7). The July 1, 2009 Emergency Rule was amended in order to reorganize the provisions in the appropriate place in LAC 50:V.953 of the *Louisiana Administrative Code* as a result of August 4, 2009 Emergency Rules which amended the reimbursement methodology for inpatient hospital services (*Louisiana Register*, Volume 35, Number 10).

The department now proposes to amend the provisions governing the reimbursement methodology for inpatient hospital services to establish a Medicaid upper payment limit financing mechanism to provide supplemental payments to acute care general hospitals. This initiative, known as the Low Income and Needy Care Collaboration, will provide supplemental payments to non-rural, non-state

hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients.

This action is being taken to secure new federal funding and to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program. It is estimated that the implementation of this Emergency Rule will be budget neutral for state fiscal year 2009-10 since it is a public-private collaboration.

Effective January 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospitals

#### Chapter 9. Non-Rural, Non-State Hospitals

##### Subchapter B. Reimbursement Methodology

#### §953. Acute Care Hospitals

A. - J.2. ...

K. Hospitals Impacted by Hurricane Katrina (Region 1). Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with those in §963.A and outpatient supplemental payments) will not exceed \$170,000,000.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

L. Other Hospitals Impacted by Hurricanes Katrina and Rita. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with those in §959.C and §963.B payments) will not exceed \$10,000,000.

1. Qualifying Criteria. Non-rural, non-state acute care hospitals that do not qualify for payment under §953.E provisions may receive a supplemental payment if the hospital is located in either the New Orleans or Lake Charles metropolitan statistical area (MSA), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 1,000, but less than or equal to 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$130 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

M. Hospitals Impacted by Hurricanes Gustav and Ike. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §959.D and §963.C payments) will not exceed \$7,500,000.

1. Qualifying Criteria. Non-rural, non-state acute care hospitals that do not qualify for payment under §953.E or §953.F may receive a supplemental payment if the hospital is located in either DHH Administrative Region 2 (Baton Rouge) or 3 (Thibodaux), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 2,500, but less than or equal to 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$105 per Medicaid paid day.

iii. Qualifying hospitals with greater than 1,000, but less than or equal to 2,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$225 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

N. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 2009.

1. Payments to small rural hospitals as defined in R.R. 40:1300 shall be exempt from this reduction.

2. - 2.b. Repealed.

O. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity

through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#018

## DECLARATION OF EMERGENCY

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Major Teaching Hospitals  
(LAC 50:V.1333)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.1333 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S.

49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to provide for a supplemental Medicaid payment to non-rural, non-state acute care hospitals for having a Medicaid inpatient utilization greater than 30 percent and teaching hospitals for furnishing additional graduate medical education services as a result of the suspension of training programs at the Medical Center of Louisiana at New Orleans due to the impact of Hurricane Katrina (*Louisiana Register*, Volume 34, Number 5). The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to acute care hospitals designated as major teaching hospitals to facilitate the development of public-private collaborations in order to preserve access to medically necessary services for Medicaid recipients (*Louisiana Register*, Volume 35, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 1, 2009 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program so as to assure sufficient access to hospital services.

Effective for dates of service on or after January 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals designated as major teaching hospitals.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

#### **Subpart 1. Inpatient Hospitals**

#### **Chapter 13. Teaching Hospitals**

#### **Subchapter B. Reimbursement Methodology**

#### **§1333. Major Teaching Hospitals**

A. Effective for dates of service on or after October 1, 2009, a quarterly supplemental payment shall be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. These payments shall be used to facilitate the development of public-private collaborations to preserve access to medically necessary services for Medicaid recipients. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must:

- a. be designated as a major teaching hospital by the department in state fiscal year 2009;
- b. have provided at least 25,000 Medicaid acute care paid days for state fiscal year 2008 dates of service; and
- c. have provided at least 4,000 Medicaid distinct part psychiatric unit paid days for state fiscal year 2008 dates of service.

2. Payments shall be distributed quarterly and shall be calculated using the Medicaid paid days for service dates in state fiscal year 2008 serving as a proxy for SFYs 2010 and 2011 service dates.

3. Payments are applicable to Medicaid service dates provided during each quarter and shall be discontinued for the remainder of the state fiscal year in the event that the maximum payment cap is reached or by June 30, 2011, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#026

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Medicaid Eligibility—Express Lane Eligibility  
(LAC 50:I.Chapter 11)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:III.Chapter 11 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 407 of the 2007 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to utilize income determinations made by the Food Stamp Program, Women, Infants and Children (WIC) Program or the National School Lunch Program to determine income eligibility for the Medicaid Program or the Louisiana Children's Health Insurance Program (LaCHIP) as soon as federal legislation allowing the same was enacted.

Federal regulations in the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 established provisions to allow states to rely on a finding from an Express Lane agency to more effectively reach out and enroll eligible, but uninsured, children in the Medicaid Program. Express Lane eligibility is an administrative streamlining option that uses data from other government agencies to identify, enroll and retain children who are

eligible for Medicaid or the Children's Health Insurance Program (CHIP).

In compliance with Act 407 and CHIPRA of 2009, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule that adopted provisions which established Express Lane eligibility in order to expedite identification and enrollment of uninsured children in the Medicaid/LaCHIP Program (*Louisiana Register*, Volume 35, Number 10). The department now proposes to amend the October 10, 2009 Emergency Rule to revise the list of agencies that will provide data for Express Lane eligibility determinations. This action is being taken to promote the health and well-being of children by increasing access to health care coverage.

Effective January 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the October 10, 2009 Emergency Rule governing Express Lane eligibility determinations.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part III. Eligibility**

#### **Subpart 3. Eligibility Groups and Factors**

#### **Chapter 11. Express Lane Eligibility**

#### **§1101. General Provisions**

A. The Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, Public Law No. 111-3, established provisions which allowed states to rely on a finding from an Express Lane agency to more effectively reach out and enroll eligible but uninsured children in the Medicaid Program or the Children's Health Insurance Program (CHIP).

B. Express Lane eligibility is an administrative streamlining option that uses data from other government agencies to identify, enroll and retain children who are eligible for Medicaid or CHIP.

C. Express Lane eligibility shall be utilized for enrollment of uninsured children under the age of 19.

D. These provisions shall not apply to eligibility determinations made after September 30, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **§1103. Eligibility Determinations**

A. The department shall rely on the findings from an Express Lane agency to satisfy one or more of the eligibility components (regardless of any differences in the income budget unit, disregards, deeming of income or other methodologies) required to make an eligibility determination.

1. An Express Lane agency is a public agency that is determined by the department to be capable of making the determinations of one or more of the eligibility requirements defined in the Medicaid State Plan. Express Lane agencies are need-based programs/agencies.

B. The department shall utilize eligibility findings from Express Lane agencies that administer the:

1. Food and Nutrition Act of 2008 (Supplemental Nutrition Assistance Program/SNAP, also known as the Food Stamp Program); or

2. Richard B. Russell National School Lunch Act (Free Lunch program).

C. Verification requirements for citizenship or nationality status are applicable to Express Lane eligibility determinations.

D. If a finding from an Express Lane agency results in a determination that a child does not satisfy an eligibility requirement for Medicaid or CHIP, the department shall determine eligibility for assistance using its regular procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **§1105. Automatic Enrollment**

A. The department may initiate and determine Medicaid eligibility based on data from sources other than the child (or the child's family) without an application form; however, a child can only be automatically enrolled for coverage if the:

1. child or family consents to being enrolled through affirmation and signature on an Express Lane agency application; and

2. department has informed the parent, guardian or custodial relative of the:

a. services that will be covered;

b. appropriate methods for using such services;

c. premium or other cost-sharing charges that apply (if applicable);

d. medical support obligations created by enrollment (if applicable); and

e. actions the parent, guardian or relative must take to maintain enrollment and renew coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **§1107. Disclosure of Eligibility Data**

A. Notwithstanding any other provisions of law, Express Lane agencies in possession of data directly relevant to Express Lane eligibility determinations shall convey such data to the department and shall ensure that the individual (or his parent, guardian, caretaker relative, authorized representative) whose circumstances are described in the data has either provided consent to disclosure, or has not objected to disclosure.

1. Such individuals shall be provided with advance notice of disclosure and a reasonable opportunity to object to the disclosure of their information.

B. Express Lane agency sources of data shall include, but is not limited to, the following:

1. eligibility files;

2. unemployment compensation benefits;

3. wages and income information;

4. Social Security Administration and Internal Revenue Service information;

5. employer wage reports to a state agency;

6. vital records information about births in any state;

or

7. third party health insurance information.

#### **C. Improper Disclosure Penalties**

1. Civil Monetary Penalty. A private entity that publishes, discloses, or makes known in any manner or to any extent not authorized by the department any information obtained for the purposes of Express Lane eligibility may be subject to civil monetary penalties for each unauthorized

publication or disclosure, pursuant to §1942 of Title XIX of the Social Security Act.

2. Criminal Penalty. A private entity that willfully publishes, discloses, or makes known in any manner or to any extent not authorized by the department any information under this section shall be fined not more than \$10,000 or imprisoned not more than 1 year, or both, for each unauthorized publication or disclosure.

3. The limitations and requirements that apply to Express Lane eligibility data disclosure shall not be construed to prohibit the conveyance or disclosure of data or information otherwise permitted under federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#025

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Medicaid Eligibility  
Medicare Savings Programs  
(LAC 50:III.2325, 10703 and 10705)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:III.2325 and §10703 and amends §10705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted the state and federal requirements governing the determination of eligibility of persons applying for coverage under the Qualified Medicare Beneficiary, Qualified Disabled and Working Individuals, Specified Low Income Medicare Beneficiary and the Qualified Individual-1 Programs as identified under Title XIX of the Social Security Act. These are commonly referred to as the Medicare Savings Programs. Medicaid coverage under these programs is

limited to payment of Medicare premiums, and may pay deductibles and co-insurance. Under Section 1902(r)(2) of the Social Security Act, states are allowed to use less restrictive resource methodologies in determining eligibility for most Medicaid eligibility groups than are used by the related cash assistance programs. The applicant's resources are currently considered in the determination of Medicaid eligibility. Resources are defined as cash assets or assets that can be converted to cash, such as bank accounts, stocks, bonds, automobiles and property.

The Medicare Improvement for Patients and Providers Act (MIPPA) of 2008 modified the provisions of the Medicare Savings Programs in order to increase enrollment and reduce barriers to enrollment. In order to reduce the administrative burden for the Medicaid Program, to align Medicare Savings Program eligibility more closely with the Medicare Part D Low Income Subsidy eligibility and to eliminate financial hardship for individuals, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing the Medicare Savings Programs to incorporate provisions regarding the submittal of low income subsidy data and to disregard certain assets in the eligibility determination process.

This action is being taken to promote the health and welfare of elderly and disabled citizens who could derive benefits through the Medicare Savings Programs and to avoid federal sanctions. It is anticipated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$1,183,455 for state fiscal year 2009-2010.

Effective January 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Medicare Savings Programs.

### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part III. Eligibility

#### Subpart 3. Eligibility Groups and Factors

#### Chapter 23. Eligibility Groups and Medicaid Programs

#### §2325. Medicare Savings Programs

A. Medical assistance furnished to Qualified Medicare Beneficiaries (QMB), Specified Low Income Beneficiaries (SLMB) and Qualified Individuals (QI) is commonly referred to as the Medicare Savings Programs (MSP). Medicaid coverage under these programs is limited to payment of Medicare premiums, and may pay deductibles and co-insurance.

1. Effective January 1, 2010, with the consent of an individual completing an application for Low Income Subsidy (LIS) benefits, the Social Security Administration will transmit LIS data to Medicaid.

2. Medicaid shall use the data to initiate an application for the individual for benefits under the Medicare Savings Program.

3. The date that the LIS application is filed with the Social Security Administration will be used as the date of application for MSP and for determining the effective date of MSP eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Subpart 5. Financial Eligibility**

**Chapter 107. Resources**

**§10703. General Provisions**

A. Medicaid utilizes the income and asset methodologies of the Supplemental Security Income (SSI) Program to determine Medicaid eligibility for aged, blind and disabled individuals.

B. Under Section 1902(r)(2) of the Social Security Act, states are allowed to use less restrictive income and asset methodologies in determining eligibility for most Medicaid eligibility groups than are used by the cash assistance program.

C. Medicare Savings Programs

1. The following individual's resources shall be considered in determining eligibility for the Medicare Savings Programs:

- a. the applicant/recipient; and
- b. the spouse living in the home with the applicant/recipient.

2. Resource Assessment. The assets test for full Low Income Subsidy (LIS) eligibility is set at three times the SSI asset standard, indexed annually by the increase in the consumer price index.

a. Effective January 1, 2010, the asset limit for all Medicare Savings Programs will be the same as the asset limit for Medicare's Part D full benefit LIS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**§10705. Resource Disregards**

A. - B.1. ...

C. Effective January 1, 2010, the following assets shall be disregarded in eligibility determinations for all Medicare Savings Programs:

1. the cash surrender value of life insurance, regardless of face value; and
2. the value of all vehicles owned by the applicant or spouse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#019

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Nursing Facilities  
Reimbursement Rate Reduction  
(LAC 50:VII.1305 and 1309)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.1305 and 1309 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the nursing facility (*Louisiana Register*, Volume 33, Number 10).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the department published an Emergency Rule to reduce the reimbursement rates paid to non-state nursing facilities (*Louisiana Register*, Volume 35, Number 7). The department published an Emergency Rule to amend the reduction to the per diem rates of non-state nursing facilities (*Louisiana Register*, Volume 35, Number 10). This action is being taken to promote the health and welfare of Medicaid recipients by encouraging the continued participation of non-state nursing facilities in the Medicaid Program.

Effective February 18, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state nursing facilities.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part VII. Long Term Care Services**

**Subpart 1. Nursing Facilities**

**Chapter 13. Reimbursement**

**§1305. Rate Determination**

A. - D.1.h.Example ...

i. For dates of service on or after July 3, 2009, the facility-specific direct care rate will be adjusted in order to reduce the wage enhancement from \$4.70 to a \$1.30 wage enhancement prior to the case-mix adjustment for direct care staff. The \$1.30 wage enhancement will be included in the direct care component of the floor calculations. It is the intent that this wage enhancement be paid to the direct care staff.

i. Effective with the next rebase, on or after July 1, 2010, the wage enhancement will be eliminated.

D.2. - 4.b. ...

5. Adjustment to the Rate. Adjustments to the Medicaid daily rate may be made when changes occur that will eventually be recognized in updated cost report data (such as a change in the minimum wage, a change in FICA or a utility rate change). These adjustments would be effective until the next rebasing of cost report data or until such time as the cost reports fully reflect the change.

6. Budget Shortfall. In the event the department is required to implement reductions in the nursing facility program as a result of a budget shortfall, a budget reduction category shall be created. Without changing the parameters established in these provisions, this category shall reduce the statewide average Medicaid rate by reducing the reimbursement rate paid to each nursing facility using an equal amount per patient day.

a. Repealed.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**§1309. State-Owned or Operated and Non-State, Government-Owned or Operated Facilities**

A. - B.2. ...

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1793 (August 2002), amended LR 30:53 (January 2004), LR 31:1596 (July 2005), LR 32:2265 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#027

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Low Income and Needy Care Collaboration  
LAC:V.5313, 5513, 5713, 5913 and 6115)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5313, §5513, §5713, §5913 and §6115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 22, Number 1). In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for outpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state public hospitals that demonstrated substantial financial and operational challenges in the aftermath of Hurricanes Katrina, Rita, Gustav and Ike (*Louisiana Register*, Volume 35, Number 7).

The department now proposes to amend the provisions governing the reimbursement methodology for outpatient hospital services to establish a Medicaid upper payment limit financing mechanism to provide supplemental payments to acute care general hospitals. This initiative, known as the Low Income and Needy Care Collaboration, will provide supplemental payments to non-rural, non-state hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients.

This action is being taken to secure new federal funding and to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program. It is estimated that the implementation of this Emergency Rule will be budget neutral for state fiscal year 2009-10 since it is a public-private collaboration.

Effective January 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by non-rural, non-state hospitals.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospitals

#### Subpart 5. Outpatient Hospitals

#### Chapter 53. Outpatient Surgery

#### Subchapter B. Reimbursement Methodology

#### §5313. Non-Rural, Non-State Hospitals

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for outpatient surgery services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

a. A *non-state hospital* is defined as a hospital which is owned or operated by a private entity.

b. A *low income and needy care collaboration agreement* is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:

## **Chapter 55. Clinic Services**

### **Subchapter B. Reimbursement Methodology**

#### **§5513. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity

through a low income and needy care collaboration agreement.

a. A *non-state hospital* is defined as a hospital which is owned or operated by a private entity.

b. A *low income and needy care collaboration agreement* is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:

## **Chapter 57. Laboratory Services**

### **Subchapter B. Reimbursement Methodology**

#### **§5713. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for laboratory services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

a. A *non-state hospital* is defined as a hospital which is owned or operated by a private entity.

b. A *low income and needy care collaboration agreement* is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 36:1900 (September 2009), amended LR 36:

## **Chapter 59. Rehabilitation Services**

### **Subchapter B. Reimbursement Methodology**

#### **§5913. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

a. A *non-state hospital* is defined as a hospital which is owned or operated by a private entity.

b. A *low income and needy care collaboration agreement* is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:

## **Chapter 61. Other Outpatient Hospital Services**

### **Subchapter B. Reimbursement Methodology**

#### **§6115. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 5.65 percent of the rates effective as of August 3, 2009. Final reimbursement shall be at 78.48 percent of allowable cost through the cost settlement process.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries and rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

a. A *non-state hospital* is defined as a hospital which is owned or operated by a private entity.

b. A *low income and needy care collaboration agreement* is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#020

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Major Teaching Hospitals  
(LAC 50:V.6533)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.6533 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for outpatient hospital services rendered by acute care hospitals (*Louisiana Register*, Volume 22, Number 1). The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for outpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state acute care hospitals designated as major teaching hospitals to facilitate the development of public-private collaborations in order to preserve access to medically necessary services for Medicaid recipients (*Louisiana Register*, Volume 35, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 1, 2009 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program so as to assure sufficient access to hospital services.

Effective for dates of service on or after January 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by non-rural, non-state hospitals designated as major teaching hospitals.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 5. Outpatient Hospitals

#### Chapter 65. Teaching Hospitals

#### Subchapter B. Reimbursement Methodology

#### §6533. Major Teaching Hospitals

A. Effective for dates of service on or after October 1, 2009, a quarterly supplemental payment shall be issued to qualifying non-rural, non-state acute care hospitals for

outpatient services rendered during the quarter. These payments shall be used to facilitate the development of public-private collaborations to preserve access to medically necessary services for Medicaid recipients. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must:

a. be designated as a major teaching hospital by the department in state fiscal year 2009;

b. have provided at least 25,000 Medicaid acute care paid days for state fiscal year 2008 dates of service;

c. have provided at least 4,000 Medicaid distinct part psychiatric unit paid days for state fiscal year 2008 dates of service; and

d. provided at least 20,000 Medicaid outpatient paid visits for state fiscal year 2008 dates of service.

2. Payments shall be distributed quarterly based on Medicaid paid claims data from service dates in state fiscal year 2008.

3. Payments are applicable to Medicaid service dates provided during each quarter and shall be discontinued for the remainder of the state fiscal year in the event that the maximum payment cap is reached or by June 30, 2011, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#028

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Benefits Management Program  
Methods of Payment  
(LAC 50:XXIX.915-925, 949 and 963)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.915-925, 949 and 963 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the

Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format in Title 50 of the Louisiana Administrative Code (*Louisiana Register*, Volume 32, Number 6). The department later promulgated a Rule (*Louisiana Register*, Volume 34, Number 1) amending the provisions of the June 20, 2006 Rule governing methods of payments in order to comply with the directives of Act 801 of the 2006 Regular Session of the Louisiana Legislature, which directed the department to submit a Medicaid State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to increase the Medicaid dispensing fee on prescription drugs, contingent upon CMS' approval of the proposed amendment. CMS subsequently disapproved the proposed amendment to the Medicaid State Plan that had been submitted in compliance with Act 801. An Emergency Rule was later promulgated to repeal the January 20, 2008 Rule and restore the repealed provisions of the June 20, 2006 Rule in the *Administrative Code* (*Louisiana Register*, Volume 36, Number 1).

Act 10 of the 2009 Regular Session of the Louisiana Legislature provided that the department may redefine the reimbursement methodology for multiple source drugs in establishing the state maximum allowable cost (MAC) in order to control expenditures to the level of appropriations for the Medicaid Program. In accordance with the provisions of Act 10, the department now proposes to amend the provisions governing the reimbursement methodology for prescription drugs to redefine the Louisiana maximum allowable cost (LMAC). In addition, the department proposes to increase the dispensing fee for drugs with an LMAC.

This action is being taken to control expenditures in the Medical Assistance Program and to avoid a budget deficit. It is estimated that implementation of this Emergency Rule will decrease expenditures in the Pharmacy Benefits Management Program by \$16,577,771 for fiscal year 2009-2010.

Effective for dates of service on or after January 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the methods of payment for prescriptions covered under the Pharmacy Benefits Management Program.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXIX. Pharmacy**

#### **Chapter 9. Methods of Payment**

#### **§915. Cost Determination**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1062 (June 2006), repealed LR 34:87 (January 2008), repromulgated LR 36:

#### **§917. Maximum Allowable Overhead Cost Calculation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1062 (June 2006), repealed LR 34:87 (January 2008), repromulgated LR 36:

#### **§919. Parameters and Limitations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:87 (January 2008), repromulgated LR 36:

#### **§921. Interim Adjustment to Overhead Cost**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:87 (January 2008), repromulgated LR 36:

#### **§923. Cost Survey**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:87 (January 2008), repromulgated LR 36:

#### **§925. Dispensing Fee**

A. The dispensing fee for drugs with a state maximum allowable cost will be up to \$9.29 per prescription. This includes the provider fee assessed for each prescription filled in the state or shipped into the state, as mandated by R.S. 46:2625.

1. - 2. Repealed.

B. The dispensing fee for other drugs not subject to a state maximum allowable cost will be up to \$5.77 per prescription. This includes the provider fee assessed for each prescription filled in the state or shipped into the state.

C. The dispensing fee for drugs obtained through the Public Health Service 340B Program will be up to \$9.29 per prescription. This includes the provider fee assessed for each prescription filled in the state or shipped into the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Subchapter D. Maximum Allowable Costs**

#### **§949. Cost Limits**

A. - B. ...

1. Louisiana Maximum Allowable Cost (LMAC) is the average actual acquisition cost of a drug, defined as the pharmacist's payment made to purchase a drug product, adjusted by a multiplier of 1.69.

2. LMAC reimbursement will apply to certain multiple source drug products that meet therapeutic equivalency, market availability, and other criteria deemed appropriate by the Louisiana Medicaid Agency. Drugs are subject to LMAC if there are at least two non-innovator multiple source alternative products available that are classified by the FDA as Category "A" in the Approved Drug Products with Therapeutic Equivalence Evaluations.

3. LMAC rates are based on the average actual acquisition cost per drug, adjusted by a multiplier of 1.69, which assures that each rate is sufficient to allow reasonable access by providers to the drug at or below the established LMAC rate. The LMAC rate will apply to all versions of a drug that share the same active ingredient combination, strength, dosage form, and route of administration.

4. Average actual acquisition cost will be determined through a semi-annual collection and review of pharmacy invoices and other information deemed necessary by the Louisiana Medicaid Agency and in accordance with applicable State and Federal law.

5. In addition to the semi-annual review, the Louisiana Medicaid Agency will evaluate on an ongoing basis throughout the year and adjust the rates as necessary to reflect prevailing market conditions and to assure that pharmacies have reasonable access to drugs at or below the applicable LMAC rate. Providers shall be given advance notice of any additions, deletions, or adjustments in price. A complete LMAC rate listing will be available to providers and updated periodically.

6. In no case shall a recipient be required to provide payment for any difference in a prescription price that may occur with implementation of the LMAC limit, nor may BHSF use a cost which exceeds the established maximums except for physician certification for brand name drugs.

C. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Subchapter E. 340B Program**

#### **§963. Reimbursement**

A. - B. ...

C. Dispensing Fees. The covered entity shall be paid a dispensing fee for each prescription dispensed to a Medicaid patient, unless the covered entity has implemented the carve-out option, in which case the covered entity shall be paid the state's existing maximum allowable overhead cost. With respect to contract pharmacy arrangements in which the contract pharmacy also serves as the covered entity's billing agent, the contract pharmacy shall be paid the dispensing fee on behalf of the covered entity, unless the covered entity elects the Medicaid carve-out, in which case the contract pharmacy shall be paid the state's existing maximum allowable overhead cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#021

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Pharmacy Benefits Management Program  
Restoration of the Dispensing Fee  
(LAC 50:XXIX.Chapter 9)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format in Title 50 of the Louisiana Administrative Code (*Louisiana Register*, Volume 32, Number 6). Act 801 of the 2006 Regular Session of the Louisiana Legislature directed the department to submit a Medicaid State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to increase the Medicaid dispensing fee on prescription drugs, contingent upon CMS' approval of the proposed amendment. In order to comply with the directives of Act 801, the department promulgated a Rule amending the provisions of the June 20, 2006 rule governing methods of payments to increase the dispensing fee on prescription drugs (*Louisiana Register*, Volume 34, Number 1). CMS subsequently disapproved the proposed amendment to the Medicaid State Plan that had been submitted in compliance with Act 801. The department now proposes to repeal the January 20, 2008 Rule and restore the repealed provisions of the June 20, 2006 Rule in the Administrative Code.

This action is being taken to assure that the administrative rules governing the Pharmacy Benefits Management Program are in compliance with the Medicaid State Plan. It is anticipated that the implementation of this Emergency Rule will not have a fiscal impact.

Effective December 21, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the January 20, 2008 Rule and reinstates the repealed provisions of the June 20, 2006 Rule governing the methods of payment for the Pharmacy Benefits Management Program.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XXIX. Pharmacy**  
**Chapter 9. Methods of Payment**  
**Subchapter A. General Provisions**  
**§901. Definitions**

\* \* \*  
 \* \* \*

*Dispensing Fee*—Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006), amended LR 34:87 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Subchapter B. Maximum Allowable Overhead Cost**

**§915. Cost Determination**

A. Definitions

*Adjustment Factors*—

a. CPI—all item factor;  
 b. CPI—medical care factor;  
 c. Wage Factor. Each of the above adjustment factors is computed by dividing the value of the corresponding index for December of the year preceding the overhead year and by the value of the index one year earlier (December of the second preceding year).

d. ROI. One year treasury bill rate applied to a portion of prescription drug cost (17 percent) in recognition of inventories maintained for the purpose of filling prescriptions.

*Base Rate*—the rate calculated in accordance with §917.A.2, plus any base rate adjustments which are in effect at the time of calculation of new rates or adjustments. The base rate was initially calculated using the 1990/91 fee survey findings of average cost for pharmacies representative of the average pharmacy participating in Medicaid reimbursement (15,000 - 50,000 Rx volume). This rate was then inflated forward to December 1990 to establish the first overhead cost maximum.

*Base Rate Components*—the base rate is the summation of the components shown below. Each component is intended to set the maximum allowable for the costs indicated by its name.

Base Rate Component	Adjustment Factor
Pharmacist Salaries	CPI-Medical Care
Other Salaries	WAGE
Other Routine Services	CPI-All Items
Inventory Cost	ROI(1)
Fixed Cost	None(2)
Return on Equity	None(3) (1)No return on equity allowed (2)No Inflation allowed (3)Adjusted by ROE Factor (4)Indices

a. CPI—All Items. The Consumer Price Index for all Urban Consumers - Southern Region (All items line of Table 12) as published by the United States Department of Labor.

b. CPI—Medical Care. *The Consumer Price Index for all Urban Consumers - Southern Region* (Medical Care

line of Table 12) as published by the United States Department of Labor.

c. Wage. The average annual wage for production or nonsupervisory service workers as furnished by the Dallas Regional Office of the Bureau of Labor Statistics of the U.S. Department of Labor. This figure will be obtained by telephone in May and will be utilized to calculate the adjustment factor based upon the change which has occurred since December of the preceding year.

d. ROI. Interest Rates—Money and Capital Markets. The average percent per year for one year U.S. Treasury bills taken from the *Federal Reserve Bulletin* report on Money Market Rates (line 17) for the preceding calendar year.

*Maximum Allowable Overhead Cost*—overhead cost is determined through use of cost survey results adjusted by various indices to assure recognition of costs which must be incurred by efficiently and economically operated providers. The cost determined is referred to as a maximum allowable to reflect application of the "lesser of" methodology for determining total reimbursement.

*Overhead Year*—the one-year period from July 1 - June 30 of the next calendar year during which a particular rate is in effect. It corresponds to a state fiscal year.

B. Determination of Limits. Limits on overhead cost are established through the overhead cost survey process which classifies cost in accordance with generally accepted accounting principles and Medicare principles regarding the allowability of cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1062 (June 2006), repealed LR 34:87 (January 2008), promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**§917. Maximum Allowable Overhead Cost Calculation**

A. The most recent cost survey results will be utilized to establish base cost for professional salaries; other salaries; other routine costs; and fixed cost. Claims processing data for claims paid in the current overhead period will be utilized to determine average drug cost. Seventeen percent of this cost will be utilized as base prescription inventory. The base prescription inventory amount shall not be added to the overhead cost maximum allowable. Base prescription inventory is recognized as an allowable investment subject to a return on investment only. Calculation of maximum allowable overhead cost per prescription shall be performed as follows:

1.  $NORC = ORC \times CPIF$ :

a. NORC is the new other routine cost component;  
 b. ORC is the current (base) routine cost component;  
 c. CPIAI is the CPI - All items Economic Adjustment Factor.

2.  $NPS = PS \times CPIMC$ :

a. NPS is the new pharmacist salaries cost component;  
 b. PS is the current (base) pharmacist salaries cost component;  
 c. CPIMC is the CPI - Medical Care Economic Adjustment Factor.

3.  $NOS = OS \times W$ :
  - a. NOS is the new other salaries cost component;
  - b. OS is the current (base) salaries cost component;
  - c. W is the Wage Economic Adjustment Factor.
4.  $NROI = ROI \times IR$ :
  - a. NROI is the new return on investment component;
  - b. ROI is 17 percent of the current average drug cost;
  - c. IR is the Interest Rate - Money and Capital Markets
5.  $Rate = (NORC + NPS + NOS + FCC) \times ROEF + NROI$  where:
  - a. NORC, NPS, NOS, and NROI are computed by formulae in Paragraphs 1-4 above;
  - b. FCC is the fixed cost component which does not include prescription drug inventory;
  - c. ROEF is the return on equity factor of 1.05 applied to all cost components except return on investment which is calculated separately.

B. After formal adoption of the new maximum allowable overhead cost, the components computed above will become the base components used in calculating the next year's overhead maximum allowable, unless they are adjusted as provided in §911 below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1062 (June 2006), repealed LR 34:87 (January 2008), promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### §919. Parameters and Limitations

A. Method of Calculation. All calculations described herein shall be carried out algebraically.

B. Rounding in all calculations the base maximum allowable and the base components will be rounded to the nearest one cent (two decimal places) and the Economic Adjustment Factors will be rounded to four decimal places.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:87 (January 2008), promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### §921. Interim Adjustment to Overhead Cost

A. If an unanticipated change in conditions occurs which affects the overhead costs of at least 50 percent of the enrolled providers by an average of five percent or more, the maximum allowable overhead cost may be adjusted. Medicaid of Louisiana will determine whether or not the maximum allowable overhead cost limit should be changed when requested to do so by 10 percent of the enrolled pharmacies. The burden of proof as to the extent and cost effect of the unanticipated charge will rest with the entities requesting the change. Medicaid of Louisiana, however, may initiate an adjustment without a request to do so.

1. Temporary Adjustments. Temporary adjustments do not affect the base cost used to calculate a new maximum allowable overhead cost limit. Temporary adjustments may be made in the rate when changes which will eventually be reflected in the economic indices, such as a change in the minimum wage, occur after the end of the period covered by

the index, i.e., after the December preceding the limit calculation. Temporary adjustments are effective only until the next overhead cost limit calculation which uses economic adjustment factors based on index values computed after the change causing the adjustment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:88 (January 2008), promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### §923. Cost Survey

A. Every three years a cost survey shall be conducted which includes cost data for all enrolled pharmacy providers. Participation shall be mandatory for continued enrollment as a pharmacy provider. Cost data from providers who have less than 12 months of operating data shall not be utilized in determining average overhead cost or grouping providers by prescription volume. Pre-desk reviews shall be performed on all cost surveys to determine an average provider profile based upon total prescription volume. Through statistical analysis, minimum and maximum volume ranges shall be established which represent the majority of providers participating in Medicaid reimbursement. Cost surveys of providers whose prescription volumes are above or below the volume range established, shall not be utilized in calculating average overhead cost. Information submitted by participants shall be desk reviewed for accuracy and completeness. Field examination of a representative sample of participants shall be primarily random, but geographic location and type of operation shall be taken into consideration in order to ensure examination of pharmacies in various areas of the state and representative of various types of operations.

B. Cost Finding Procedures. The basic analytical rationale used for cost finding procedures shall be that of full costing. Under full costing, all costs associated with a particular operation are summed to find the total cost. The objective of cost finding shall be to estimate the cost of dispensing prescriptions through generally accepted accounting principles.

C. Inflation Adjustment. Where data collected from participating pharmacies represents varying periods of time, cost and price data may be adjusted for the inflation that occurred over the relevant period. The appropriate Consumer Price Index Indicator (Table 12, Southern Region, *Urban Consumer*) and wage indicator produced by the U.S. Department of Labor Statistics shall be utilized.

D. In addition to cost finding procedures, a usual and customary survey shall be included in the survey instrument. This instrument shall be used to determine the following:

1. an average usual and customary charge, or gross margin for each pharmacy;
2. the computation of the net margin per prescription (gross margin less computed dispensing cost per prescription) in order to approximate the average profit per prescription;
3. computation of the average percentage of markup per prescription; and
4. the computation of average usual and customary charges shall include adjustments to allow comparability

with upper limits for prescription reimbursement utilized by Medicaid of Louisiana.

E. Statistical Analysis. Statistical analysis shall be undertaken to estimate the cost to pharmacies of dispensing prescriptions. Such analysis shall include, but not be limited to:

1. an average dispensing cost for pharmacies;
2. analysis of the correlations among overhead costs and parameters deemed relevant to pharmacy costs;
3. the statistical relationship between independent variables and dispensing cost shall be analyzed using the techniques of simple linear and stepwise multiple regression. Independent variables may include annual volume of prescriptions filled, pharmacy location, type of ownership, and number of Medicaid claims paid:

a. before regression analysis is performed, efforts shall be made to insure that the data collected during the surveys was accurate and representative, and that errors made during data entry are corrected. Efforts should include tabulations, cross tabulations, data plotting, and visual data inspection.

F. Survey Results

1. Medicaid of Louisiana shall consider survey results in determining whether the maximum allowable overhead cost should be rebased. Where the overhead cost survey findings demonstrate the current maximum allowable is below average cost or above the eightieth percentile of cost, rebasing shall be required.

2. Medicaid of Louisiana may review the survey data and establish a new cost base utilizing the cost survey findings and any other pertinent factors, including, but not limited to:

- a. inflation adjustment;
- b. application of return on equity;
- c. recognition of inventory investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:88 (January 2008), promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**§925. Dispensing Fee**

A. Maximum Allowable Overhead Cost

1. The maximum allowable overhead cost will remain at the level established for state fiscal year 1994-95. This maximum allowable overhead cost will remain in effect until the dispensing survey is completed and an alternate methodology is determined.

2. No inflation indices or any interim adjustments will be applied to the maximum allowable overhead costs.

B. Provider participation in the Louisiana Dispensing Fee Survey shall be mandatory. Failure to cooperate in the Louisiana Dispensing Fee Survey by a provider shall result in removal from participation as a provider of pharmacy services under Title XIX. Any provider removed from participation shall not be allowed to re-enroll until a dispensing fee survey document is properly completed and submitted to the bureau.

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Subchapter C. Average Wholesale Price**

**§935. Estimated Acquisition Cost Formula**

A. - B.1.c. ...

2. Louisiana's maximum allowable cost limitation plus the maximum allowable overhead cost;

3. federal upper limits plus the maximum allowable overhead cost; or

4. - c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Subchapter D. Maximum Allowable Costs**

**§945. Reimbursement Methodology**

A. ...

1. The maximum payment by the agency for a prescription shall be no more than the cost of the drug established by the state plus the established dispensing fee.

2. Each pharmacy's records shall establish that the established dispensing fee paid by the Medical Assistance Program for prescription does not exceed the dispensing fee paid by others. This also applies to the payment for insulin and diabetic testing agency and indwelling catheters and catheterization trays for which the dispensing fee may not exceed 50 percent of the wholesale price.

3. Repealed.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**§949. Cost Limits**

A. - A.1.a. ...

b. At least three suppliers list the drug (which has been classified by the FDA as category "A" in the aforementioned publication based on listings contained in current editions (or updates) of published compendia of cost information for drugs available for sale nationally.

2. ...

3. The Medical Assistance Program shall provide pharmacists who participate in Title XIX reimbursement with updated lists reflecting:

A.3.a. - B.1. ...

2. The agency shall make determinations of which multiple source drugs are to be subject to LMAC regulation based on the availability of drugs in the Louisiana Medical Assistance Program. The availability of a drug product will be determined by review of provider claim data. Providers shall be given advanced notice of any additions, deletions, or adjustments in price. Any provider may request and receive at no charge, one complete listing annually.

B.3. - D. ...

1. Limits on payments for multiple source drugs shall not be applicable when the prescriber certifies in his own handwriting that a specified brand name drug is medically necessary for the care and treatment of a recipient. Such certification may be written directly on the prescription or on a separate sheet which is attached to the prescription. A standard phrase in the prescriber's handwriting, such as "brand necessary" will be acceptable.

D.2. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

### **Subchapter E. 340B Program**

#### **§963. Reimbursement**

A. - B. ...

C. Dispensing Fees. The covered entity shall be paid a dispensing fee of \$8.10 for each prescription dispensed to a Medicaid patient, unless the covered entity has implemented the carve-out option, in which case the covered entity shall be paid the state's existing maximum allowable overhead cost. With respect to contract pharmacy arrangements in which the contract pharmacy also serves as the covered entity's billing agent, the contract pharmacy shall be paid the \$8.10 dispensing fee on behalf of the covered entity, unless the covered entity elects the Medicaid carve-out, in which case the contract pharmacy shall be paid the state's existing maximum allowable overhead cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#022

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Bureau of Health Services Financing**

Pharmacy Program—Medication Administration  
H1N1 Immunizations  
(LAC 50:XXIX.123 and 991)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XXIX.123 and §991 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et

seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The U.S. Department of Health and Human Services (DHHS) renewed the declaration of a public health emergency involving novel influenza A (2009 H1N1) on July 24, 2009. The Centers for Medicare and Medicaid Services (CMS) subsequently provided guidance and technical assistance regarding coverage of vaccine administration and the provision of vaccinations at non-traditional care sites. In response to the renewed declaration and CMS guidance, the Louisiana State Health Officer issued an Emergency Order and Protocol to allow eligible pharmacists to administer influenza vaccinations. The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the Pharmacy Program to incorporate provisions to allow payment for the administration of H1N1 vaccine by qualified Medicaid enrolled pharmacists (*Louisiana Register*, Volume 35, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 10, 2009 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to the H1N1 vaccine.

Effective February 8, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Pharmacy Program to allow payment to pharmacies for administration of the H1N1 vaccine by qualified pharmacists.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXIX. Pharmacy**

### **Chapter 1. General Provisions**

#### **§123. Medication Administration**

A. H1N1 Vaccine Administration. The department shall provide coverage for administration of the H1N1 vaccine by a qualified pharmacist when:

1. the pharmacist has been credentialed by the Louisiana Board of Pharmacy to administer medications; and

2. the pharmacist is Medicaid enrolled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

### **Chapter 9. Methods of Payment**

#### **Subchapter H. Medication Administration Payments**

#### **§991. Vaccine Administration Fees**

A. Effective for dates of service on and after October 10, 2009, the reimbursement to pharmacies for immunization administration (intramuscular or intranasal) performed by qualified pharmacists, is a maximum of \$15.22. This fee includes counseling, when performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1001#029

## DECLARATION OF EMERGENCY

### Department of Public Safety and Corrections Corrections Services

#### Louisiana Sex Offender Assessment Panels (LAC 22:I.109)

In accordance with the provisions R.S. 49:953, the Department of Public Safety and Corrections, Corrections Services, hereby determines that adoption of an Emergency Rule for the Louisiana Sex Offender Assessment Panels mandated by Act No. 205 of the 2009 Regular Session is necessary and that for the following reasons failure to adopt the rule on an emergency basis will result in imminent peril to the public health, safety and welfare.

Act No. 186 of the 2006 Regular Session created the Louisiana Sex Offender Assessment Panels within the Department of Public Safety and Corrections. The Act mandated membership and duties for the panels. The panels were to evaluate each offender convicted of a sex offense as defined in R.S. 15:541 who were to be released from the custody of the department by any means, to determine if the offender may be a child sexual predator or sexually violent predator.

Act No. 126 of the 2007 Regular Session amended R.S. 15:560 et seq. and reduced the panel membership from six to three members. A psychologist or a psychiatrist in the employment or under contract to the Department of Public Safety and Corrections was required to be a member.

Act No. 205 of the 2009 Regular Session amended R.S. 15:560 et seq. to provide that the psychologist who is a member of the panel may be employed by the Department of Public Safety and Corrections or the Department of Health and Hospitals. This panel member may also be a physician employed by the Department of Public Safety and Corrections or the Department of Health and Hospitals.

In addition to evaluating offenders convicted of a sex offense as defined in R.S. 15:541, child predators who are required to register pursuant to the provisions of R.S. 15:542 were added to the list of offenders who must be evaluated by a risk review panel.

Act No. 205 added a provision that requires the sentencing court to make a judicial determination whether the offender is deemed a sexually violent predator or a child sexual predator based upon a recommendation of a Louisiana Sex Offender Panel. The Act also added sanctions for offenders who fail to comply with the requirements of R.S. 15:560 et seq. and provided an appeal mechanism for those offenders determined to be a sexually violent predator or a child sexual predator.

The department has maintained a list of all sex offenders that were convicted of a sex offense as defined in R.S. 15:541 or who were released from the custody of the department by any means, on or after August 15, 2006. This list contains over 700 sex offenders. The department is

concerned with the imminent peril to the public health, safety and welfare of the department and the general public and desires to adopt the Louisiana Sex Offender Assessment Panels process as an emergency rule. The panels must immediately continue reviewing information on released offenders, as well as sex offenders and child predators who are pending release and the department desires to proceed at once.

For the foregoing reasons, the Department of Public Safety and Corrections, Corrections Services, has determined that the adoption of an emergency rule for implementation of the Louisiana Sex Offender Assessment Panels is necessary and hereby provides notice of its declaration of emergency effective on January 10, 2010, in accordance with R.S. 49:953. This Emergency Rule shall be in effect for 120 days or until adoption of the final Rule, whichever occurs first.

## Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

#### Chapter 1. Secretary's Office

#### §109. Louisiana Sex Offender Assessment Panels

A. Purpose—to facilitate the identification and management of those offenders who may be sexually violent predators and/or child sexual predators and to develop written policy and procedures for the sex offender assessment panels consistent with statutory requirements, public safety and administrative efficiency. The provisions of this regulation shall apply to all sex offenders and child predators in accordance with Act No. 205 of the 2009 Regular Session who are released by any means from the department's custody on or after August 15, 2006.

B. Applicability—deputy secretary, undersecretary, chief of operations, assistant secretary, regional wardens, wardens, director of probation and parole, chairman of the board of pardons, chairman of the board of parole and the sheriff or administrator of local jail facilities. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to identify those offenders who meet the statutory requirements of a sexually violent predator and/or child sexual predator through the Sex Offender Assessment Panel review process. The panels shall evaluate all sex offenders and child predators in accordance with the provisions of this regulation prior to their release from incarceration.

#### D. Definitions

*Child Predator*—a person who has been convicted of a criminal offense against a victim who is a minor as defined in R.S. 15:541 (25) (see Attachment A.).

*Child Sexual Predator*—a judicial determination as provided for in R.S. 15:560 et seq. for an offender who has been convicted of an offense as defined in R.S. 15:541(24) and/or (25) (see Attachments A and B) and who is likely to engage in additional sex offenses against children because he has a mental abnormality or condition which can be verified, or because he has a history of committing crimes, wrongs, or acts involving sexually assaultive behavior or acts which indicate a lustful disposition toward children.

*Court*—the judicial district court where the offender was sentenced.

*Judicial Determination*—a decision by the court that an offender is or continues to be a child sexual predator or a sexually violent predator.

*Mental Abnormality*—a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others. Nothing in this definition is intended to supersede or apply to the definitions found in R.S. 14:10 or 14 in reference to criminal intent or insanity.

*Regional Facility*—a state correctional facility located within one of nine regions of the state, as designated by the secretary. Each regional facility shall be responsible for certain requirements pursuant to the provisions of this regulation for offenders housed in their state correctional facility, as well as DPS and C offenders housed in local jails within their respective region.

*Sex Offender*—a person who has been convicted of a criminal offense as defined in R.S. 15:541(24) (See Attachment B.)

*Sexually Violent Predator*—a judicial determination as provided for in R.S. 15:560 et seq. for an offender who has been convicted of an offense as defined in R.S. 15:541(24) and/or (25) (see Attachments A and B) and who has a mental abnormality or anti-social personality disorder that makes the person likely to engage in predatory sexually violent offenses.

#### E. Panel Composition and Guidelines

1. A total of three sex offender assessment panels are hereby created in the north, central and south regions of the state. An executive management officer of the secretary's office shall serve as the administrator for all panels. Three executive staff officers, employees of the department (one for each region: north, central and south), shall serve as coordinator for an assigned panel. Each panel shall consist of three members as follows:

a. one member shall be the secretary or designee who shall be chairman;

b. one member shall be a psychologist licensed by the Louisiana State Board of Examiners of Psychologists who has been engaged in the practice of clinical or counseling psychology for not less than three consecutive years who is employed by the Department of Public Safety and Corrections or the Department of Health and Hospitals or a physician in the employ of the Department of Public Safety and Corrections or the Department of Health and Hospitals or under contract to the Department of Public Safety and Corrections whose credentials and experience are compatible with the evaluation of the potential threat to public safety that may be posed by a child sexual predator or a sexually violent predator;

i. if the psychologist or physician is an employee of the Department of Health and Hospitals, the secretary of both departments shall consult and jointly select the member;

c. the warden (or deputy) at the state facility where the offender is housed or the warden (or deputy) of the regional facility for offenders housed in local jail facilities.

i. A probation and parole officer with a minimum of 10 years experience or a retired law enforcement officer with at least five years of experience in investigating sex offenses may also serve as the third panel member at the discretion of the secretary.

2. All official actions of a panel shall require an affirmative vote of a majority of the members of the panel.

3. Each panel shall meet at least once quarterly and upon the call of the chairman or upon the request of any two members.

4. Notwithstanding the provisions of R.S. 15:574.12, each panel shall review presentence reports, prison records, medical and psychological records, information and data gathered by the staffs of the Board of Pardons, the Board of Parole, the Division of Probation and Parole, the District Attorney from the judicial district which prosecuted the case and information provided by or obtained from the victim(s) and the offender (which may include a personal interview), and any other information obtained by the boards or the department.

5. Panels shall have the duty to evaluate every offender who has been convicted of a sex offense as defined in R.S. 15:541 (24) (See Attachment B) and child predator as defined in R.S. 15:541 (25) (See Attachment A) and who is to be released from the custody of the department or a local jail facility, by any means, to determine if the offender may be a child sexual predator and/or a sexually violent predator in accordance with the provisions of R.S. 15:560 et seq.

#### F. Procedures

1. Each panel shall evaluate every sex offender and child predator as defined by this regulation at least six months prior to the release date of the offender.

2. A panel's evaluation shall primarily be conducted by file review of all relevant information available to the department, including the information specified in Paragraph E.4. Information and/or recommendations received from individuals other than those employed by the department or the local jail facility where the offender is housed shall be made in writing. Interview, telephone or video conferencing may be conducted at the discretion of the panel.

3. Panel decisions shall be recorded by individual vote. Official results shall be maintained by the respective panel coordinator. Each panel coordinator is responsible for maintaining a separate file on each offender reviewed by the panel.

4. If a panel affirmatively votes that an offender is a sexually violent predator and/or a child sexual predator, the panel shall forward the recommendation to the sentencing court. The recommendation shall include the factual basis upon which the recommendation was based and shall include a copy of all information that was available to the panel during the evaluation process.

5. Upon receiving a recommendation from a panel, the sentencing court will review the recommendation that an offender is a sexually violent predator and/or a child predator.

6. If, after a contradictory hearing the sentencing court finds by clear and convincing evidence and renders a judicial determination that the offender is a sexually violent predator or a child sexual predator, the offender shall be ordered to comply with the following:

- a. supervision by the Division of Probation and Parole, upon release from incarceration, for the duration of his natural life;
- b. registration as a sex offender in accordance with the provisions of R.S. 15:542 et seq. for the duration of his natural life;
- c. provide community notification in accordance with the provisions of R.S. 15:542 et seq. for the duration of his natural life;
- d. submit to electronic monitoring pursuant to the provisions of R.S. 15:560.4 for the duration of his natural life; and
- e. abide by the supervised release conditions enumerated in R.S. 15:560.3A.(4) through (14), which may include treatment for persons convicted of sex offenses when deemed appropriate or ordered to do so by the offender's probation and parole officer as stated in R.S. 15:560.3A.(10).

7. If a judicial determination is rendered that an offender is a sexually violent predator or a child sexual predator, the panel administrator shall notify the warden of the state facility where the offender is housed or the warden of the regional facility for offenders housed in local jail facilities.

8. Upon receipt of notification from the panel administrator, the warden of the state facility where the offender is housed or the warden of the regional facility for offenders housed in local jail facilities shall ensure that the sex offender pre-registration process is initiated.

**G. Electronic Monitoring of Child Sexual Predators or Sexually Violent Predators**

1. Each offender determined by the court to be a child sexual predator and/or a sexually violent predator pursuant to the provisions of this regulation shall be required to be electronically monitored by the Division of Probation and Parole in a fashion that provides for electronic location tracking.

2. Unless it is determined that an offender is unable to pay all or any portion of the costs for electronic monitoring, each offender to be electronically monitored shall pay the cost of such monitoring.

3. The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

4. Only in the case that an offender determined to be a child sexual predator and/or a sexual violent predator is unable to pay his own electronic monitoring costs, and there are no funds available to the department to pay for such monitoring, may the requirements of electronic monitoring be waived.

**H. Notification of Release.** The department shall notify the Office of State Police when a child sexual predator and/or sexually violent predator has been released from imprisonment. The Office of State Police shall then send out an alert by means of a predator alert system to local law enforcement officials to inform them of such releases.

**I. Appeal of Decision**

1. An offender determined to be a sexually violent predator and/or a child sexual predator may petition the court for a review of this determination not more than once every three years, provided that the sex offender is currently

receiving treatment from a court or treatment provider approved by the department, and good cause for such reconsideration is shown by the offender.

2. If the court grants the petition for review, the court shall refer the case to the sex offender assessment panel for review in accordance with the provisions of Section E., and a recommendation to the court for a judicial determination as to whether or not the offender continues to be a sexually violent predator and/or a child sexual predator. After receiving the recommendation of the panel, the court shall schedule a hearing and provide notice of the hearing in accordance with the provisions of Section F.4.

**J. Rights of Action.** Any employee who participates in the Louisiana Sex Offender Assessment Panels review process pursuant to this regulation shall be immune from civil or criminal liability when the actions taken are in good faith in a reasonable manner in accordance with generally accepted medical or other professional practices.

**1. Attachment A**

<b>List of Child Predator Offenses R.S. 15:541 (25)</b>	
(Criminal offense against a victim who is a minor under the age of 18 when the defendant is not the parent of the victim)	
14:44	Aggravated Kidnapping
14:44.1	Second Degree Kidnapping
14:44.2	Aggravated Kidnapping of a Child
14:45	Simple Kidnapping
14:45.1	Interference with the Custody of a Child
14:46	False Imprisonment
14:46.1	False Imprisonment; Offender Armed With A Dangerous Weapon
14:46.2	Human Trafficking
14:82.1	Prostitution; Persons Under Seventeen
14:84(1)(3)(5)(6)	Pandering
14:86	Enticing Persons into Prostitution
23:251(A)(4)	Minors under 16, prohibits employment for exhibition use

a. A conviction for the perpetration, attempted perpetration or conspiracy to commit the offenses stated above shall be considered a child predator.

**2. Attachment B**

<b>List of Sex Offenses R.S. 15:541 (24)</b>	
14:41	Rape
14:42	Aggravated Rape
14:42.1	Forcible Rape
14:43	Simple Rape
14:43.1	Sexual Battery
14:43.2	Second Degree Sexual Battery
14:43.3	Oral Sexual Battery
14:43.5	Intentional Exposure of Aids Virus
14:78	Incest
14:78.1	Aggravated Incest
14:80	Felony Carnal Knowledge of a Juvenile
14:81	Indecent Behavior with Juveniles
14:81.1	Pornography Involving Juveniles
14:81.2	Molestation of a Juvenile
14:81.3	Computer Aided Solicitation of a Juvenile
14:81.4	Prohibited Sexual Conduct Between an Educator and Student
14:89	Crime Against Nature
14:89.1	Aggravated Crime Against Nature
14:92(A) (7)	Contributing to the Delinquency of Juveniles (Perform any sexually immoral act)
14:93.5	Sexual Battery of the Infirm

List of Sex Offenses R.S. 15:541 (24)	
14:106(A)(5)	Obscenity by Solicitation (of a person under the age of 17)
14:283	Video Voyeurism
14:283.1	Voyeurism, Second or Subsequent Offense

a. A conviction for the perpetration, attempted perpetration or conspiracy to commit the offenses stated above shall be considered a sex offense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:560 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1631 (August 2008), amended LR 36:

James M. Le Blanc  
Secretary

1001#058

### DECLARATION OF EMERGENCY

#### Department of Public Safety and Corrections Corrections Services

##### Restoration of Good Time (LAC 22:I.319)

In accordance with the provisions of R.S. 49:953, the Department of Public Safety and Corrections, Corrections Services, hereby determines that adoption of an emergency rule for the implementation of Department Regulation No. B-04-006 Restoration of Good Time is necessary and that for the following reasons failure to adopt the Rule on an emergency basis will result in imminent peril to the public's safety, health and welfare.

The department's goals and priorities are centered around and focus on the opportunities created by reentry initiatives.

It is the secretary's policy to strengthen the department's commitment to promoting initiatives for an offender's successful reentry into society. To accomplish this goal, the department is implementing positive rewards for offenders demonstrating improved institutional behavior by complying with institutional rules and policies.

Louisiana's incarceration rate ranks first in the nation. Under this rule, offenders that have successfully adjusted to incarceration and who have exhibited improved behavior for a two year period could have previously taken good time credits restored. Thereby, release from physical custody and commencement of parole supervision could occur at an earlier date. This would result in significant cost savings for the state. Implementation of this rule could result in a reduction in the total number of incarcerated offenders.

For the foregoing reasons, the Department of Public Safety and Corrections, Corrections Services, has determined that the adoption of an emergency rule is necessary for the adoption and implementation of Department Regulation No. B-04-005 and hereby provides notice of its declaration of emergency effective on January 10, 2010, in accordance with R.S. 49:953. This Emergency Rule shall be in effect for 120 days or until adoption of the final Rule, whichever occurs first.

## Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

#### Chapter 3. Adult Services

#### §319. Restoration of Good Time

A. Purpose—to establish the secretary's policy regarding the restoration of previously forfeited good time for disciplinary violations for offenders who have demonstrated satisfactory progress in faithfully observing the Disciplinary Rules and Procedures for Adult Offenders.

B. Applicability—deputy secretary, undersecretary, chief of operations, assistant secretary, regional wardens, wardens, the sheriff or administrator of local jail facilities and the director of the Office of Information Services. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to strengthen the department's commitment to an offender's successful reentry efforts by implementing positive rewards for offenders who have demonstrated improved institutional behavior.

#### D. Definition

*Regional Facility*—a state correctional facility located within one of nine regions of the state, as designated by the secretary. Each warden of a regional facility shall be responsible for certain requirements pursuant to the provisions of this regulation for offenders housed in their state correctional facility, as well as DPS and C offenders housed in local jail facilities within their respective region.

#### E. General Procedures

1. As of the effective date of this regulation, offenders who have previously forfeited good time as a result of disciplinary action and have remained disciplinary report free for a consecutive 24 month period may be eligible for restoration of the previously forfeited good time. Restoration of previously forfeited good time shall not exceed 540 days during an offender's instant term of incarceration.

2. Forfeiture of good time resulting from any Schedule A or Schedule B rule violation may be restored in accordance with the provisions of this regulation, with the exception of Rule #8, Escape or Attempt to Escape, or any rule violation that was a result of battery of an employee, visitor, guest or their families. All Rule #21 offenses shall be carefully reviewed for consideration of restoration of good time.

3. For offenders released on parole or good time parole supervision and returned to custody as a parole violator, the availability of forfeited good time is limited to the amount earned during the instant term of incarceration. Time spent in custody prior to release on parole or good time parole supervision shall not apply toward the 24 consecutive month period required for review.

4. Even though an offender may receive approval for restoration of goodtime, the department shall retain authority to void or adjust the amount of the restoration at any time during the offender's incarceration if a review of the record reveals the restoration calculation was erroneous.

5. Under no circumstances shall an offender's restoration of previously forfeited good time under the provisions of this regulation cause him to be considered overdue for release at the time of approval.

F. Review and Outcome Process

1. Offenders housed in state correctional facilities who have not been found guilty of a disciplinary violation for a consecutive 24 month period, except as noted in Paragraph E.2, shall complete an application for restoration of good time (Form B-04-006-A) and submit the application to the institution's records office.

2. The appropriate regional facility shall provide an application for restoration of good time (Form B-04-006-A) to the sheriff or administrator of each local jail facility within their region. Offenders housed in local jail facilities who meet the eligibility requirements stated in Paragraph F.1 shall complete the application and submit it to the sheriff or administrator, who shall forward all completed applications to the records office of the appropriate regional facility within which the local jail facility is located.

3. The records supervisor/manager or designee shall review the application and disciplinary record to verify the offender's eligibility for restoration of forfeited good time. If the offender is eligible for restoration of forfeited good time, the records supervisor/manager shall indicate the number of days eligible for restoration on the application for restoration of good time (Form B-04-06-A.)

4. The warden shall develop a screening and review process for consideration of restoration of forfeited good time. This process shall include a recommendation for the number of days to be restored. The number of days to be restored shall include consideration of participation or failure to participate in rehabilitative programs. Upon completion, the reviewer shall forward the offender's application to the warden of the state facility or the warden of the appropriate regional facility for review and consideration.

5. If the offender is ineligible for restoration of forfeited good time, the records supervisor/manager shall indicate the reason for ineligibility on the application form and return a copy to the offender. The original application shall be filed in the offender's master prison record.

6. The warden of the state facility or the warden of the regional facility shall review the offender's application and verification of eligibility and shall approve or disapprove the recommendation.

7. If approved, the records supervisor/manager or designee shall restore the amount of good time approved by the warden. Only that amount which was actually forfeited can be restored. A copy of the approved application, as well as the revised master prison record shall be sent to the offender. For offenders housed in local jail facilities, a copy of the approved application and the revised master prison record shall be returned to the sheriff or administrator of the local jail facility who shall notify the offender. The originals shall be filed in the offender's master prison record.

8. If denied, the warden of the state facility shall provide a written reason on the application for restoration of good time (Form B-04-006-A) and provide a copy to the offender. For offenders housed in local jail facilities, a copy of the application (including the justification for denial) shall be returned to the sheriff or administrator of the local jail facility who shall notify the offender. The original application shall be filed in the offender's master prison record.

9. If an offender's request for restoration of good time is denied or good time is partially restored, the offender may reapply for reconsideration in six months from the date of the original application.

10. The warden's decision regarding restoration of good time is final and shall not be appealed through the administrative remedy procedure.

11. In addition to the current CAJUN procedures in place regarding the maintenance of the amount of good time forfeited per offender, the Office of Information Services shall implement a program to also track the restoration of good time pursuant to this regulation and Act No. 17 of the 2009 Regular Session. The amount of good time restored shall be displayed on the CAJUN master prison record screen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 36:

James M. Le Blanc  
Secretary

1001#057

**DECLARATION OF EMERGENCY**

**Department of Social Services  
Office of Community Services**

Residential Licensing—Disqualification  
(LAC 48:I.Chapter 88 and  
LAC 67:III.Chapter 73 and V.Chapters 61-69)

The Department of Social Services (DSS), Office of Family Support (OFS) and Office of Community Services (OCS), have exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt this second Emergency Rule relative to the LAC 48:I. Subpart 3, Licensing and Certification, LAC 67:III, Subpart 21, Child Care Licensing, and LAC 67:V, Subpart 8, Residential Licensing.

This second Emergency Rule, effective January 1, 2010, will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective September 4, 2009, since it is effective for a maximum of 120 days and will expire on December 31, 2009, before the final Rule takes effect. (The final Rule will be published in the February 20, 2010 *Louisiana Register*.)

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Information**

**Subpart 3. Licensing and Certification**

**Chapter 88. Adult Residential Care Home**

**§8807. Denial, Revocation or Nonrenewal of License,  
Appeal Procedure**

A. - D.3. ....

E. Disqualification From Application

1. Definitions, as used in this Section:

*Affiliate*—

i. with respect to a partnership, each partner thereof;

- ii. with respect to a corporation, each officer, director and stockholder thereof;
- iii. with respect to a natural person:
  - (a). that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person;
  - (b). any partnership, together with any or all its partners, in which that person is a partner; and
  - (c). any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;
  - iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or
  - v. director of any such adult residential care home.

*Department*—the Department of Social Services.

*Disqualification Period*—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

*Effective Date*—a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

*Facility*—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

*License*—

- i. any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403;
- ii. any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or
- iii. any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

*Provider*—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity, the owners are the officers, directors, and shareholders of the facility.

*Unlicensed Operation*—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

## 2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2328 (December 1998), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

## Title 67

### SOCIAL SERVICES

#### Part III. Family Support

#### Subpart 21. Child Care Licensing

#### Chapter 73. Day Care Centers

#### Subchapter A. Licensing Class "A" Regulations for Child Care Centers

#### §7303. Procedures

A. - F.7. ...

G. Disqualification From Application

1. Definitions, as used in this Section:

*Affiliate*—

- i. with respect to a partnership, each partner thereof;
- ii. with respect to a corporation, each officer, director and stockholder thereof;
- iii. with respect to a natural person:
  - (a). that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person;
  - (b). any partnership, together with any or all its partners, in which that person is a partner; and
  - (c). any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;
  - iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or
  - v. director of any such day care center.

*Department*—the Department of Social Services.

*Disqualification Period*—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

*Effective Date*—a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

*Facility*—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

*License*—

i. any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403;

ii. any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or

iii. any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

*Provider*—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity, the owners are the officers, directors, and shareholders of the facility.

*Unlicensed Operation*—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

## 2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended by the Department of Social Services,

Office of Community Services and Office of Family Support, LR 36:

## Subchapter B. Licensing Class "B" Regulations for Day Care Centers

### §7359. Procedures

A. - H. ...

#### I. Disqualification from Application

##### 1. Definitions, as used in this Section:

*Affiliate*—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person:

(a) that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person;

(b) any partnership, together with any or all its partners, in which that person is a partner; and

(c) any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

v. director of any such day care center.

*Department*—the Department of Social Services.

*Disqualification Period*—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

*Effective Date*—a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

*Facility*—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

*License*—

i. any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403;

ii. any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or

iii. any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

*Provider*—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity, the owners are the officers, directors, and shareholders of the facility.

*Unlicensed Operation*—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

## 2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent

application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 September 1992, LR 26:1636 (August 2000), repromulgated by the Office of Family Support, LR 33:2771 (December 2007), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

## **Part V. Community Services**

### **Subpart 8. Residential Living**

#### **Chapter 61. Emergency Shelter**

##### **§6103. Organization and Administration**

A. - C. 3.a. ...

D. Disqualification from Application

1. Definitions, as used in this Section:

*Affiliate*—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person:

(a). that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person;

(b). any partnership, together with any or all its partners, in which that person is a partner; and

(c). any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

v. director of any such emergency shelter.

*Department*—the Department of Social Services.

*Disqualification Period*—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

*Effective Date*—a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

*Facility*—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

*License*—

i. any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403;

ii. any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or

iii. any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

*Provider*—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity, the owners are the officers, directors, and shareholders of the facility.

*Unlicensed Operation*—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

#### **2. Disqualification of Facility and Provider**

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2669 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1544 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

## **Chapter 65. Transitional Living**

### **§6507. Application for Licensure**

A. - E. ...

#### **F. Disqualification from Application**

##### **1. Definitions, as used in this Section:**

*Affiliate*—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person:

(a). that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person;

(b). any partnership, together with any or all its partners, in which that person is a partner; and

(c). any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

v. director of any such transitional living facility.

*Department*—the Department of Social Services.

*Disqualification Period*—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

*Effective Date*—a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

*Facility*—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

*License*—

i. any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403;

ii. any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or

iii. any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

*Provider*—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity, the owners are the officers, directors, and shareholders of the facility.

*Unlicensed Operation*—operation of any child care facility or child-placing agency, adult residential care

facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

#### **2. Disqualification of Facility and Provider**

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1451-1455.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of Community Services, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the LR 35:1544 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

## **Chapter 67. Maternity Homes**

### **§6703. Definitions**

A. ...

#### **B. Disqualification from Application**

##### **1. Definitions, as used in this Section:**

*Affiliate*—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person:

(a). that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person;

(b). any partnership, together with any or all its partners, in which that person is a partner; and

(c). any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

v. director of any such maternity home.

*Department*—the Department of Social Services.

*Disqualification Period*—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

*Effective Date*—a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

*Facility*—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

*License*—

i. any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403;

ii. any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or

iii. any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

*Provider*— all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity, the owners are the officers, directors, and shareholders of the facility.

*Unlicensed Operation*— operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

## 2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent

application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1427.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

## Chapter 69. Child Residential Care

### §6905. Procedures

A. - E.5. ....

F. Disqualification from Application

1. Definitions, as used in this Section:

*Affiliate*—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person:

(a) that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person;

(b) any partnership, together with any or all its partners, in which that person is a partner; and

(c) any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

v. director of any such child residential care home.

*Department*—the Department of Social Services.

*Disqualification Period*—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

*Effective Date*—a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

*Facility*—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

*License*—

i. any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403;

ii. any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or

iii. any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

*Provider*—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity, the owners are the officers, directors, and shareholders of the facility.

*Unlicensed Operation*—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2130 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2699 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1575 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

**§6955. Procedures**

A. - E. 5. ....

F. Disqualification from Application

1. Definitions, as used in this Section:

*Affiliate*—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person:

(a). that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person;

(b). any partnership, together with any or all its partners, in which that person is a partner; and

(c). any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

v. director of any such child residential care home.

*Department*—the Department of Social Services.

*Disqualification Period*—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

*Effective Date*—a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

*Facility*—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

*License*—

i. any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403;

ii. any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or

iii. any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

*Provider*—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity, the owners are the officers, directors, and shareholders of the facility.

*Unlicensed Operation*—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this Rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

Kristy H. Nichols  
Secretary

1001#003

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Community Services

State Central Registry—Residential Licensing  
(LAC 67:V.1103, 1105, 6503, 6705, 6955 and 7107)

The Department of Social Services, Office of Community Services, has exercised the emergency provisions of the Administrative Procedure Code, R.S. 49:953(B) to amend the Louisiana Administrative Code 67:V., Subpart 3, Child Protective Services, Chapter 11; and, Subpart 8, Residential Licensing, Chapters 65, 67, 69 and 71 effective January 1, 2010 pursuant to Act 903 of the 1997 Regular Session of the Louisiana Legislature; Act 593 of the 1999 Regular Session of the Louisiana Legislature; Act 567 of the 2003 Regular Session of the Louisiana Legislature; Acts 394 and 580 of the 2006 Regular Session of the Louisiana Legislature; and, Acts 47 and 388 of the 2009 Regular Session of the Louisiana Legislature. This Emergency Rule is necessary to ensure the safety of children in child care centers and residential facilities licensed by the department; and, children receiving services from the department by certain employees.

The content of Subpart 3, Child Protective Services, Chapter 11, is substantially amended and reorganized. It affects the maintenance and release of records on investigations with justified/valid findings and in limited circumstances, inconclusive determinations on the state central registry; and, the maintenance of records for other investigation determinations by the Office of Community Services. The amendments to Subpart 8, Residential Licensing, Chapters 65, 67, 69 and 71 prohibits any owner, operator, current or prospective employee, or volunteer of a child care facility licensed by the department from working in the facility if the individual's name is recorded on the state central registry for a justified/valid finding of abuse or neglect, unless the Risk Evaluation Panel determines that the

individual does not pose a risk to children or as permitted as a result of the appeal process.

## Title 67

### SOCIAL SERVICES

#### Part V. Office of Community Services

##### Subpart 3. Child Protective Services

#### Chapter 11. Administration and Authority

##### §1103. State Central Registry

A. The Department of Social Services, Office of Community Services, establishes and will maintain a state central registry (SCR) of all reported cases of child abuse and neglect. The purpose of the SCR is to compile information of past reports of child abuse or neglect thus enabling child protection investigation staff to conduct a more complete evaluation of current reports of suspected abuse or neglect of children which may include a pattern of incidents. All records of reports of child abuse or neglect are confidential in accordance with R. S. 46:56.

B. The Louisiana Children's Code Article 616, requires the maintenance of a SCR of all reported cases. This includes records of investigations with justified/valid findings; unjustified/invalid findings in accordance with Children's Code Article 615 E(1); and, inconclusive findings for evaluating Court Appointed Special Advocates (CASA) volunteers in accordance with Children's Code Article 616 F. As part of the investigation, the Office of Community services child protection investigation staff shall provide to caretakers written notice of the SCR and the rules governing maintenance and expungement of SCR records.

1. Records of reports of non-fatality child abuse or neglect in families with determinations that the reports appear to be justified/valid will be maintained until the youngest child in the victim's family at the time of the investigation reaches the age of 18 or 10 years from the determination, whichever is longer, unless there is a subsequent report and investigation or alternative response family assessment involving the same perpetrator. In those cases, the justified/valid records will be maintained until the longest retention period for all the justified/valid determinations and assessments has elapsed. When after an investigation, the determination is made by the department that the report does appear to be justified/valid, any subsequent adjudication by a court exercising juvenile jurisdiction which dismisses the child in need of care petition involving the report shall be added to the state registry.

2. Records of reports of child fatalities in families and out of home settings determined to have been caused by child abuse or neglect will be maintained indefinitely. If there are subsequent investigations involving the same perpetrator, the justified/valid records will be maintained indefinitely.

3. Records of reports involving caretakers in restrictive care facilities, day care centers and registered family child day care homes that appear to be justified/valid will be maintained for 10 years, unless there is a subsequent report and investigation or alternative response family assessment involving the same perpetrator. In those cases, the justified/valid determinations will be maintained until the longest retention period for all the justified/valid determinations and assessments has elapsed.

4. Records on justified/valid determinations on foster families, when the child victim is a foster child, will be maintained indefinitely.

5. Information on reports that appear to be not justified/invalid or inconclusive used as a part of the basis of a later, related and justified/valid report shall become part of the file for the justified/valid report and will be maintained for the length of the time for the justified/valid report.

6. For the limited purpose of evaluating applicants for CASA volunteers, information on reports with inconclusive determinations are maintained on the SCR for the time prescribed in Louisiana Administrative Code 67:V.1105.

7. Any person whose name is included on the SCR with a justified/valid determination may file a rule to show cause against the Department of Social Services in the court exercising juvenile jurisdiction in the parish in which the investigation was conducted to show why the information on file should not be expunged. The Office of Community Services will expunge the petitioner's name and other identifying information upon receipt of a court order to do so. Any expungement order issued by a court shall not take effect as to non-identifying statistical information on file until the three-year record retention period required by federal law for audit purposes has expired, counting from the month and year of the determination. During the three-year record retention period, such records bearing the non-identifying statistical information shall be sealed and accessible only to the financial auditors.

C. The Office of Community Services is authorized to release information maintained on the SCR in limited circumstances. This information will be released according to the following provisions.

1. The Office of Community Services will disclose information maintained on the SCR regarding cases of child abuse or neglect to other states' child welfare agencies upon formal inquiry by that agency, when the inquiry is made pursuant to an ongoing child protection investigation, child protection alternative response, foster care home study, adoptive home study, or family services case following a child protection investigation in the requesting state, in accordance with R.S. 46:56(F)(4)(a). This information may also be released to private licensed child placing agencies located in Louisiana and in other states upon formal inquiry and verification of licensure. Information released to such agencies is confidential and shall not be released to sources outside the agency.

2. The Office of Community Services will conduct a search of the SCR for foster, adoptive and other home studies for the purpose of placement of children who are in the custody of the department or receiving services from the Office of Community Services.

3. The Office of Community Services will disclose limited information on a SCR records check when requested by an employer or prospective employer of a person who will be exercising supervisory authority over that employer's minor children or other dependent person as part of that person's direct employment and supervision as a caregiver by the parent or person with the dependent. The written request for the information will be a signed and notarized request form that must be signed by the employee and employer. The form will be provided upon request from the employer, prospective employer, employee, or prospective

employee. The information that will be disclosed will include whether or not a record of a justified/valid finding of abuse or neglect was found which identifies the employee or prospective employee as a perpetrator. The information will be disclosed to the employer or prospective employer.

4. The Office of Community Services will disclose information in records of reports of child abuse or neglect when requested in writing from persons cited in R.S. 46:56(F)(10)(a). The information to be disclosed is limited to whether or not the department has a report that is currently open and under investigation or has been determined to be justified/valid, the status of the investigation, the determination made by the department and any action taken by the department. Action taken by the department will include the following: case under investigation, case closed, referred for services, continued services post investigation, and child taken into custody.

5. The Office of Community Services will disclose information regarding justified/valid reports in foster homes, day care centers, restrictive care facilities and registered family child day care homes to the agency or sponsoring agency responsible for the licensure or registration of the facility.

6. The Office of Community Services will disclose information regarding justified/valid reports when requested pursuant to R.S. 46:56 (F)(1) and Children's Code Article 616 C. with a written request from a judge of a court exercising juvenile jurisdiction for a CASA applicant, with the applicant's written consent.

7. The Office of Community Services will provide SCR records checks for independent adoptions in accordance with the Louisiana Children's Code.

8. The Office of Community Services will disclose information regarding justified/valid reports when requested pursuant to R.S. 46:51.2(A) for potential or current employees of the Department of Social Services when that individual's name is listed on the SCR as a perpetrator. If the individual requests a risk assessment evaluation, this information will also be disclosed to the Risk Evaluation Panel. Information disclosed shall be limited to those names recorded on the SCR subsequent to January 1, 2010.

9. The Office of Community Services will disclose information on justified/valid findings in accordance with R.S. 46:1414.1. This information will be released according to the following provisions.

a. The Office of Community Services will disclose information on justified/valid findings involving any owner, operator, current or prospective employee or volunteer of a child care facility licensed by the Department of Social Services when requested in writing by law enforcement to prosecute under R.S. 46:1441.1.

b. The Office of Community Services will disclose information on justified/valid findings involving any owner, operator, volunteer, current or prospective employee of a child care facility licensed by the Department of Social Services when requested in writing by the department's Child Care and Residential Licensing and Regulatory Sections when they have reasonable suspicion or are provided facts that indicate reasonable suspicion the individual's name is currently maintained on the SCR as a perpetrator. Reasonable suspicion is defined as licensing having or acquiring information containing specific and

articulable facts that indicate that an owner, operator, current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor in an investigation with a justified/valid finding currently recorded on the SCR. Upon receipt of the SCR clearance information that the individual is currently listed as a perpetrator, the appropriate child care or residential licensing and regulatory personnel shall immediately report the false information on the disclosure form and the SCR listing to the local district attorney.

c. If the owner, operator, current or prospective employee or volunteer of a child care facility licensed by the Department of Social Services discloses, or it becomes known, that their name is listed on the SCR as a perpetrator and requests a risk assessment evaluation, the Office of Community Services will disclose the information on the SCR to the Risk Evaluation Panel.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Children's Code, Title VI, Child in Need of Care, Chapter 5, Articles 615 and 616, and Title XII, Adoption of Children, Chapter 2, Article 1173, R.S. 14:403(H), R.S. 46:51.2(A) R.S 46:56 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 18:79 (January 1992), amended LR 20:198 (February 1994), LR 21:583 (June 1995), LR 23:590 (May 1997), LR 26:790 (April 2000), LR 31:1609 (July 2005), LR 36:

#### **§1105. Maintenance of Information on Reports and Investigations**

A. The Office of Community Services will maintain records of investigations on reports of child abuse and/or neglect in families determined to be not justified/invalid for seven years after the determination of the finding. The records will be maintained for the exclusive use of child protection services to assist in future risk and safety assessments and shall not become part of the SCR. The information shall be confidential and will not be released to other persons or agencies outside of the Office of Community Services.

1. At the end of seven years from the date of the determination, the information will be expunged unless there have been subsequent reports and investigations involving the same perpetrator. When there are subsequent investigations with determinations of not justified/invalid or inconclusive, all records will be maintained until the youngest child in the victim's family at the time of the investigation reaches the age of eighteen or seven years from the date of the latest determination, whichever is longer.

2. When there are subsequent investigations involving the same perpetrator determined to be justified/valid and the information from the not justified/invalid report is used as a part of the basis for a later, related justified/valid report, the earlier not justified/invalid report shall become part of the file of such justified/valid report and shall cease to be a separate report, and thus becomes part of the SCR. All the information is maintained until the retention period for the justified/valid finding has elapsed.

B. The Office of Community Services will maintain records on reports of child abuse and/or neglect in families determined to be inconclusive for seven years after the determination of the finding unless there is a subsequent report and investigation involving the same perpetrator. If there is a subsequent investigation determined to be not

justified/invalid or inconclusive, the information will be maintained until the youngest child in the alleged victim's family at the time of the investigation reaches the age of eighteen or seven years from the date of the latest determination, whichever is longer. When there are subsequent investigations determined to be justified/valid and information from the inconclusive investigation is used as a part of the basis for a later, related justified/valid determination, the inconclusive report shall become part of the file of such justified/valid report and shall cease to be a separate report. All the information is maintained until the longest retention period for the determinations has elapsed.

1. Information regarding a report and investigation determined to be inconclusive for an adult with an alleged involvement in the abuse/neglect may be released, with the client's written permission when they are applying to be a CASA volunteer, foster parent, adoptive parent, or caregiver pursuant to R.S. 46:56(F)(11).

2. Information regarding a report and investigation determined to be inconclusive may be released to law enforcement without a client's consent with a current criminal investigation involving acts against children.

C. The Office of Community Services will maintain information on reports and investigations of child abuse/neglect in foster homes, restrictive care facilities, day care centers, and registered family child day care homes determined to be not justified/invalid or inconclusive. These records will be maintained for seven years unless there is a subsequent report and investigation involving the same alleged perpetrator. In that case, all records will be maintained an additional seven years for the not justified/invalid or inconclusive determination.

D. Information on investigations determined to be client non-cooperation will be maintained for seven years unless there is a subsequent investigation involving the same perpetrator, in which case all records will be maintained until the retention period for the subsequent determination has elapsed.

E. Information on investigations determined to be unable to locate will be maintained for three years unless there is a subsequent investigation or alternative response family assessment involving the same perpetrator, in which case all records will be maintained until the retention period for the subsequent determination or assessment has elapsed.

F. Information on intake cases on families and out-of-home settings closed as not accepted for an investigation or an alternative response family assessment with current or previous Office of Community Services involvement are maintained for 18 months or the record retention period for the closed or active case, whichever is longer. If a subsequent not accepted report involving the same perpetrator is received within the 18 month retention period, all intake cases are maintained until the most recent not accepted report has been maintained for 18 months. If there are subsequent reports involving the same perpetrator accepted for investigation or alternative response family assessment, all not accepted reports are maintained until the longest retention period for the justified/valid determinations or assessments has elapsed.

G. Protective Service Alerts from other states are retained for one year from the month the information is entered into the agency computer tracking and management

system when the protective service alert is not associated with an Office of Community Services case. Protective Service Alerts associated with an Office of Community Services case are retained for the retention period for the associated agency case.

H. Alternative Response Family Assessment records are retained for seven years from the date of closure. If there are subsequent investigations or alternative response family assessments involving the same perpetrator, all information will be maintained until the retention period for the subsequent determination has elapsed, however in no circumstance will the original assessment be maintained for less than seven years.

AUTHORITY NOTE: Promulgated in accordance with Act 593 of 1999 and Act 457 of 2004.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 26:96 (January 2000), amended LR 31:1608 (July 2005), LR 36:

### **Subpart 8. Residential Licensing**

#### **Chapter 65. Transitional Living**

##### **§6503. Authority**

A. ...

B. Conditions for Owners, Operators, Employees, and Volunteers. Any owner, operator, current or prospective employee, or volunteer of a transitional living facility licensed by the Department of Social Services is prohibited from working in a transitional living facility if the individual discloses, or as the result of information known or received by the Department of Social Services, that individual's name is recorded on the SCR as a perpetrator for a justified/valid finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

1. An individual owning, operating, employed by, or volunteering in a transitional living facility licensed by the department prior to January 1, 2010 shall be required to complete a SCR disclosure form on or before February 1, 2010. This information must be reported at the time of application, annually, at any time upon the request of the department, and within three working days of any such individual receiving notice of a justified/valid determination of child abuse/neglect.

a. The owner, operator, current or prospective employee, or volunteer of the licensed transitional living facility shall complete, sign and date the SCR disclosure form. The current or prospective employee or volunteer shall submit the disclosure form to the owner or operator of the facility. The owner or operator shall also be required to provide documentation of his or her SCR disclosure form.

b. If a prospective employee or volunteer discloses, that his or her name is currently recorded as a perpetrator on the SCR, the transitional living facility representative/prospective employer shall inform the applicant they will not be considered for employment or volunteer duties at the time due to the SCR disclosure and the transitional living facility representative/prospective employer will provide the prospective employee/volunteer, with the request for risk panel evaluation form.

c. Any current employee hired before January 1, 2010, that discloses, or as the result of information known or received by the Department of Social Services, their name is currently recorded on the SCR with a justified/valid finding

of abuse or neglect, will have 10 calendar days of the date of disclosure to request a risk assessment evaluation in accordance with LAC 67:I.305, or must be immediately terminated. As a condition of continued employment the employee shall be directly supervised by another staff person, who has not disclosed that their name appears with a justified/valid finding on the SCR. Under no circumstances may the staff person with the justified/valid finding be left alone and unsupervised with the residents pending the disposition of the Risk Evaluation Panel that they do not pose a risk to children. When these conditions are met, the staff member may be counted in child staff ratio. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses to appeal the finding, the employee must continue to have direct supervision by a staff person who has not disclosed that they have a justified/valid finding on the SCR at all times until a ruling by the Division of Administrative Law that they do not pose a risk to children. Supervision may end effective with such a ruling from the Division of Administrative Law. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that they do pose a risk to children, they shall be immediately terminated.

d. Individuals currently providing volunteer services on January 1, 2010 who disclose, or as the result of information known or received by the Department of Social Services, their name is currently recorded on the SCR with a justified/valid finding of abuse or neglect must be immediately discharged from volunteer duties at the transitional living facility until a Risk Evaluation Panel disposition or a Division of Administrative Law ruling that the individual does not pose a risk to children.

e. SCR disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current department licensing requirements and be available for review by Office of Community Services Residential Licensing and Regulatory personnel during the facility's hours of operation. They shall be kept on file a minimum of one year from termination of the employee or volunteer from the facility.

2. Any information received or knowledge acquired that a current owner, operator, volunteer, employee or prospective employee or volunteer has falsified a SCR disclosure form stating that they are not currently recorded as a perpetrator with a justified/valid determination of abuse or neglect shall be reported in writing to the child residential licensing program manager at the Department of Social Services, Office of Community Services, Residential Licensing and Regulatory Section as soon as possible, but no later than the close of business on the next working day.

3. Any SCR disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a transition living facility licensing file, shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

4. Violations of any of the provisions of this section will result in licensing enforcement actions up to and including revocation of the license to operate.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:92 (January 2004), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended LR 36:

## **Chapter 67. Maternity Home**

### **§6705. Application**

A. ...

B. Conditions for Owners, Operators, Employees, and Volunteers. Any owner, operator, current or prospective employee, or volunteer of a maternity home facility licensed by the Department of Social Services is prohibited from working in a maternity home facility if the individual discloses, or as the result of information known or received by the Department of Social Services, that individual's name is recorded on the SCR as a perpetrator for a justified/valid finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

1. An individual owning, operating, employed by or volunteering in a maternity home facility licensed by the department prior to January 1, 2010 shall be required to complete a SCR disclosure form on or before February 1, 2010. This information must be reported at the time of application, annually, at any time upon the request of the department, and within three working days of any such individual receiving notice of a justified/valid determination of child abuse/neglect.

a. The owner, operator, current or prospective employee, or volunteer of a maternity home facility shall complete, sign and date the SCR disclosure form. The current or prospective employee or volunteer shall submit the disclosure form to the owner or operator of the facility. The owner or operator shall also be required to provide documentation of his or her SCR disclosure form.

b. If a prospective employee or volunteer discloses that his or her name is currently recorded as a perpetrator on the SCR, the maternity home facility representative/prospective employer shall inform the applicant they will not be considered for employment or volunteer duties at the time due to the SCR disclosure and the maternity home facility representative/prospective employer will provide the prospective employee/volunteer, with the request for risk panel evaluation form.

c. Any current employee hired before January 1, 2010, that discloses, or as the result of information known or received by the Department of Social Services, their name is currently recorded on the SCR with a justified/valid finding of abuse or neglect will have 10 calendar days of the date of disclosure to request a risk assessment evaluation in accordance with LAC 67:I.305 or must be immediately terminated. As a condition of continued employment the employee shall be directly supervised by another staff person, who has not disclosed that their name appears with a justified/valid finding on the SCR. Under no circumstances may the staff person with the justified/valid finding be left alone and unsupervised with the residents pending the disposition of the Risk Evaluation Panel that they do not

pose a risk to children. When these conditions are met, the staff member may be counted in child staff ratio. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses to appeal the finding, the employee must continue to have direct supervision by a staff person who has not disclosed that they have a justified/valid finding on the SCR at all times until a ruling by the Division of Administrative Law that they do not pose a risk to children. Supervision may end effective with such a ruling from the Division of Administrative Law. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that they do pose a risk to children, they shall be immediately terminated.

d. Individuals currently providing volunteer services on January 1, 2010 who disclose, or as the result of information known or received by the Department of Social Services, their name is currently recorded on the SCR with a justified/valid finding of abuse or neglect must be immediately discharged from volunteer duties at the maternity home facility until a Risk Evaluation Panel disposition or a Division of Administrative Law ruling that the individual does not pose a risk to children.

e. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current department licensing requirements and be available for review by Office of Community Services Residential Licensing and Regulatory personnel during the facility's hours of operation. They shall be kept on file a minimum of one year from termination of the employee or volunteer from the facility.

2. Any information received or knowledge acquired that a current owner, operator, volunteer, employee or prospective employee or volunteer has falsified a SCR disclosure form stating that they are not currently recorded as a perpetrator with a justified/valid determination of abuse or neglect shall be reported in writing to the Child Residential Licensing Program Manager at the Department of Social Services, Office of Community Services, Residential Licensing and Regulatory Section as soon as possible, but no later than the close of business on the next working day.

3. Any SCR disclosure form, Risk Evaluation Panel finding and Division of Administrative Law ruling that is maintained in a maternity home facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

4. Violations of any of the provisions of this section will result in licensing enforcement actions up to and including revocation of the license to operate.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-11.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended LR 36:

## **Chapter 69. Child Residential Care—Class B**

### **§6955. Procedures**

A. - E.5. ...

F. Conditions for Owners, Operators, Employees, and Volunteers. Any owner, operator, current or prospective employee, or volunteer of a child residential facility licensed by the Department of Social Services is prohibited from working in a child residential facility if the individual discloses, or as the result of information known or received by the Department of Social Services, that individual's name is recorded on the SCR as a perpetrator for a justified/valid finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

1. An individual owning, operating, employed by, or volunteering in a child residential facility licensed by the department prior to January 1, 2010 shall be required to complete a SCR disclosure form on or before February 1, 2010. This information must be reported at the time of application, annually, at any time upon the request of the department, and within three working days of any such individual receiving notice of a justified/valid determination of child abuse/neglect.

a. The owner, operator, current or prospective employee, or volunteer of a child residential facility shall complete, sign and date the SCR disclosure form. The current or prospective employee or volunteer shall submit the disclosure form to the owner or operator of the facility. The owner or operator shall also be required to provide documentation of his or her SCR disclosure form.

b. If a prospective employee or volunteer discloses that his or her name is currently recorded as a perpetrator on the SCR, the child residential facility representative/prospective employer shall inform the applicant they will not be considered for employment or volunteer duties at the time due to the SCR disclosure and the child residential facility representative/prospective employer will provide the prospective employee/volunteer, with the request for risk panel evaluation form.

c. Any current employee hired before January 1, 2010, that discloses, or as the result of information known or received by the Department of Social Services, their name is currently recorded on the SCR with a justified/valid finding of abuse or neglect will have 10 calendar days of the date of disclosure to request a risk assessment evaluation in accordance with LAC 67:I.305 or must be immediately terminated. As a condition of continued employment the employee shall be directly supervised by another staff person, who has not disclosed that their name appears with a justified/valid finding on the SCR. Under no circumstances may the staff person with the justified/valid finding be left alone and unsupervised with the residents pending the disposition of the Risk Evaluation Panel that they do not pose a risk to children. When these conditions are met, the staff member may be counted in child staff ratio. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses to appeal the finding, the employee must continue to have direct supervision by a staff person who has not disclosed that they have a justified/valid finding on the SCR at all times until a ruling by the Division of Administrative Law that they do not pose a risk to

children. Supervision may end effective with such a ruling from the Division of Administrative Law. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that they do pose a risk to children, they shall be immediately terminated.

d. Individuals currently providing volunteer services on January 1, 2010 who disclose, or as the result of information known or received by the Department of Social Services, their name is currently recorded on the SCR with a justified/valid finding of abuse or neglect must be immediately discharged from volunteer duties at the child residential facility until a Risk Evaluation Panel disposition or a Division of Administrative Law ruling that the individual does not pose a risk to children.

e. SCR disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current department licensing requirements and be available for review by Office of Community Services Residential Licensing and Regulatory personnel during the facility's hours of operation. They shall be kept on file a minimum of one year from termination of the employee or volunteer from the facility.

2. Any information received or knowledge acquired that a current owner, operator, volunteer, employee or prospective employee or volunteer has falsified a SCR disclosure form stating that they are not currently recorded as a perpetrator with a justified/valid determination of abuse or neglect shall be reported in writing to the child residential licensing program manager at the Department of Social Services, Office of Community Services, Residential Licensing and Regulatory Section as soon as possible, but no later than the close of business on the next working day.

3. Any SCR disclosure form, Risk Evaluation Panel finding and Division of Administrative Law ruling that is maintained in a child residential facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

4. Violations of any of the provisions of this section will result in licensing enforcement actions up to and including revocation of the license to operate.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended LR 36:

## **Chapter 71. Child Residential Care—Class A**

### **§7107. Licensing Requirements**

A. - J.6. Reserved.

K. Conditions for Owners, Operators, Employees, and Volunteers. Any owner, operator, current or prospective employee, or volunteer of a child residential facility licensed by the Department of Social Services is prohibited from working in a child residential facility if the individual discloses, or as the result of information known or received by the Department of Social Services, that individual's name is recorded on the SCR as a perpetrator for a justified/valid

finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

1. An individual owning, operating, employed by, or volunteering in a child residential facility licensed by the department prior to January 1, 2010 shall be required to complete a SCR disclosure form on or before February 1, 2010. This information must be reported at the time of application, annually, at any time upon the request of the department, and within three working days of any such individual receiving notice of a justified/valid determination of child abuse/neglect.

a. The owner, operator, current or prospective employee, or volunteer of the licensed child residential facility shall complete, sign and date the SCR disclosure form. The current or prospective employee or volunteer shall submit the disclosure form to the owner or operator of the facility. The owner or operator shall also be required to provide documentation of his or her SCR disclosure form.

b. If a prospective employee or volunteer discloses that his or her name is currently recorded as a perpetrator on the SCR, the child residential facility representative/prospective employer shall inform the applicant they will not be considered for employment or volunteer duties at the time due to the SCR disclosure and the child residential facility representative/prospective employer will provide the prospective employee/volunteer, with the request for risk panel evaluation form.

c. Any current employee hired before January 1, 2010, that discloses, or as the result of information known or received by the Department of Social Services, their name is currently recorded on the SCR with a justified/valid finding of abuse or neglect will have 10 calendar days of the date of disclosure to request a risk assessment evaluation in accordance with LAC 67:I.305 or must be immediately terminated. As a condition of continued employment the employee shall be directly supervised by another staff person, who has not disclosed that their name appears with a justified/valid finding on the SCR. Under no circumstances may the staff person with the justified/valid finding be left alone and unsupervised with the residents pending the disposition of the Risk Evaluation Panel that they do not pose a risk to children. When these conditions are met, the staff member may be counted in child staff ratio. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses to appeal the finding, the employee must continue to have direct supervision by a staff person who has not disclosed that they have a justified/valid finding on the SCR at all times until a ruling by the Division of Administrative Law that they do not pose a risk to children. Supervision may end effective with such a ruling from the Division of Administrative Law. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that they do pose a risk to children, they shall be immediately terminated.

d. Individuals currently providing volunteer services on January 1, 2010 who disclose, or as the result of information known or received by the Department of Social Services, their name is currently recorded on the SCR with a justified/valid finding of abuse or neglect must be immediately discharged from volunteer duties at the child

residential facility until a Risk Evaluation Panel disposition or a Division of Administrative Law ruling that the individual does not pose a risk to children.

e. SCR disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current department licensing requirements and be available for review by Office of Community Services Residential Licensing and Regulatory personnel during the facility's hours of operation. They shall be kept on file a minimum of one year from termination of the employee or volunteer from the facility.

2. Any information received or knowledge acquired that a current owner, operator, volunteer, employee or prospective employee or volunteer has falsified a SCR disclosure form stating that they are not currently recorded as a perpetrator with a justified/valid determination of abuse or neglect shall be reported in writing to the Child Residential Licensing Program Manager at the Department of Social Services, Office of Community Services, Residential Licensing and Regulatory Section as soon as possible, but no later than the close of business on the next working day.

3. Any SCR disclosure form, Risk Evaluation Panel finding and Division of Administrative Law ruling that is maintained in a child residential facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

4. Violations of any of the provisions of this section will result in licensing enforcement actions up to and including revocation of the license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:

Kristy H. Nichols  
Secretary

1001#011

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Child Care Assistance—Job Search  
(LAC 67:III. 5103, 5104 and 5109)

The Department of Social Services (DSS), Office of Family Support (OFS), has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedure Act, to amend LAC 67:III, Subpart 12, Chapter 51, §§5103, 5104, and 5109, Child Care Assistance Program. This Emergency Rule effective January 1, 2010, will remain in effect for a period of 120 days.

Due to the necessity of operating the Child Care Assistance Program (CCAP) with available funding, the agency feels it is necessary to discontinue Job Search as a countable Employment and Training (E&T) activity. Due to budget constraints, this will align with the department's requirement to ensure core services are provided to assist

needy families during difficult economic times. This Rule should result in a reduction of CCAP cases and will allow the department to address the child care needs of participants who are currently employed or in an approved educational activity.

**Title 67**  
**SOCIAL SERVICES**  
**Part III. Office of Family Support**  
**Subpart 12. Child Care Assistance**

**Chapter 51. Child Care Assistance Program**  
**Subchapter A. Administration, Conditions of Eligibility, and Funding**

**§5103. Conditions of Eligibility**

A. - B.3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veterans' Administration Disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. employed for a minimum average of 25 hours per week and all countable employment hours must be paid at least at the federal minimum hourly wage; or

b. attending a job training or educational program for a minimum average of, effective April 1, 2003, 25 hours per week (attendance at a job training or educational program must be verified, including the expected date of completion); or

c. engaged in some combination of employment which is paid at least at the federal minimum hourly wage, or job training, or education as defined in Subparagraph B.4.b of this Section that averages, effective April 1, 2003, at least 25 hours per week.

d. Exception: a household in which all of the members described in Paragraph B.4 of this section meet the disability criteria is not eligible for child care assistance unless one of those members meets, effective April 1, 2003, the required minimum average of 25 activity hours per week.

B.5. - B.6. ...

7. The family requests child care services, provides the information and verification necessary for determining eligibility and benefit amount, and meets appropriate application requirements established by the state. Required verification includes birth verification for all children under 18 years of age, proof of all countable household income, proof of the hours of all employment or education/training, and effective October 1, 2004, proof of immunization for each child in need of care.

B.8 - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 33:506 (March 2007), LR 34:692 (April 2008), LR 36:

**§5104. Reporting Requirements Effective February 1, 2004**

A. - B.1. ...

2. an interruption of at least three weeks or termination of any TEMP's employment or training; or

3. a child receiving CCAP services leaves the home.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1487 (July 2004), amended LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 36:

**Subpart 12. Child Care Assistance**

**Chapter 51. Child Care Assistance Program**

**Subchapter B. Child Care Providers**

**§5109. Payment**

A. - B.3.a. ...

b. the number of hours the head of household, the head of household's spouse or non-legal spouse, or the minor unmarried parent is working and/or attending a job training or educational program each week, plus one hour per day for travel to and from such activity; or

B.3.c. - F. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445(December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:

Kristy H. Nichols  
Secretary

1001#001

**DECLARATION OF EMERGENCY**

**Department of Social Services**  
**Office of Family Support**

Child Care Licensing—State Central Registry  
(LAC 67:III 7302,7304,7355, and 7357)

The Department of Social Services (DSS), Office of Family Support (OFS), has exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) to adopt the Louisiana Administrative Code (LAC) Title 67, Part III, Subpart 21, Chapter 73, Sections 7302, 7304, 7355 and 7357. This Emergency Rule shall remain in effect for a period of 120 days and becomes effective January 1, 2010.

The department finds it necessary to adopt this emergency rule, finding that an imminent threat to the safety and welfare of children in child care facilities licensed by the Department of Social Services exists. Pursuant to Act 388 of the 2009 Regular Session of the Louisiana Legislature, the Department of Social Services finds it necessary to adopt this Rule which prohibits any owner, operator, current or

prospective employee, or volunteer of a child care facility licensed by the department from working in the facility if the individual's name is recorded on the state central registry for a justified (valid) finding of abuse or neglect, unless the Risk Evaluation Panel determines that the individual does not pose a risk to children or as permitted as a result of the appeal process. This Rule is necessary to ensure the safety of children in child care centers licensed by the department.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 21. Child Care Licensing**

**Chapter 73. Day Care Centers**

**Subchapter A. Licensing Class "A" Regulations for  
Child Care Centers**

**§7302. Authority**

A. - E. ...

F. Conditions for Owners, Operators, Employees and Volunteers. Any owner, operator, current or prospective employee, or volunteer of a child care facility requesting licensure by the department and/or a child care facility licensed by the Department of Social Services is prohibited from working in a child care facility if the individual discloses, or as the result of information known or received by the Department of Social Services, that individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

1. An individual owning, operating, employed by or volunteering in a child care facility prior to January 1, 2010, licensed by the department shall be required to complete a state central registry disclosure form on or before February 1, 2010. This information shall be reported at the time of application, annually, at any time upon the request of the department, and within three working days of any such individual receiving notice of a justified (valid) determination of child abuse or neglect.

a. The owner, operator, and current employee/volunteer of the licensed child care facility shall complete, sign and date the state central registry disclosure form. The current or prospective employee/volunteer shall submit the disclosure form to the owner or operator of the facility. The owner or operator shall also be required to provide documentation of his or her state central registry disclosure form.

b. Any current employee/volunteer hired before January 1, 2010, who discloses that their name is recorded on the state central registry with a justified (valid) finding of abuse or neglect, or through reasonable suspicion, or as the result of information known or received by the Department of Social Services will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305 or shall be terminated immediately. As a condition of continued employment the employee/volunteer shall be directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children

pending the disposition of the Risk Evaluation Panel that they do not pose a risk to children. When these conditions are met, the employee/volunteer may be counted in child staff ratio. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the employee/volunteer shall be terminated immediately. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding within the required timeframe, the employee/volunteer shall continue to have direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling by the Division of Administrative Law that they do not pose a risk to children. Supervision may end effective with such a ruling from the Division of Administrative Law. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that they do pose a risk to children, they shall be terminated immediately.

2. After January 1, 2010, any prospective owner, operator, or prospective employee/volunteer of a child care facility requesting licensure by the department and/or the child care facility licensed by the department shall be required to complete a state central registry disclosure form. This information shall be reported at the time of application, annually, at any time upon the request of the department, and within three working days of any such individual receiving notice of a justified (valid) determination of child abuse or neglect.

a. The prospective employee/volunteer of a child care facility requesting licensure by the department and/or licensed child care facility shall complete, sign and date the state central registry disclosure form. The prospective employee/volunteer shall submit the disclosure form to the owner or operator of the facility. The owner or operator shall also be required to provide documentation of his or her state central registry disclosure form.

b. If a prospective operator, employee/volunteer discloses that his or her name is currently recorded as a perpetrator on the state central registry, the child care facility representative/prospective employer shall inform the applicant they will not be considered for employment or volunteer duties at the time due to the state central registry disclosure and the child care facility representative/prospective employer will provide the prospective employee/volunteer with the request for risk panel evaluation form.

3. SCR disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current department licensing requirements and be available for review by Child Care Licensing and Regulatory personnel during the facility's hours of operation. They shall be kept on file a minimum of one year from termination of the employee or volunteer from the center.

4. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee or prospective employee or volunteer has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing

to a Child Care Licensing manager at the Department of Social Services, Office of Family Support, Child Care Licensing and Regulatory Section as soon as possible, but no later than the close of business on the next working day.

5. Any state central registry disclosure form, Risk Evaluation Panel finding and Division of Administrative Law ruling that is maintained in a child care facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

6. Violations of any of the provisions of this section shall result in licensing enforcement actions up to and including revocation of the license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1107 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2755 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

#### §7304. Definitions

\* \* \*

*Department*—the Department of Social Services in Louisiana.

\* \* \*

*Director*—refers to executive director, center director, and/or director designee.

\* \* \*

*Child Care Staff*—all full or part-time paid or non-paid staff who perform routine services for the child care center and have direct or indirect contact with children at the center. Staff includes the director, child care staff, and any other employees of the center such as the cook, housekeeper, driver, substitutes, and foster grandparents excluding extra-curricular personnel.

\* \* \*

*Employee*—all full or part-time paid center staff who perform services for the child care center and have direct or indirect contact with children at the center.

\* \* \*

*Reasonable Suspicion*—Child Care Licensing and Regulatory personnel has or acquires information containing specific and articulable facts indicating that an owner, operator, current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor in an investigation with a justified (valid) finding currently recorded on the state central registry.

\* \* \*

*State Central Registry*—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by the Office of Community Services.

\* \* \*

*Volunteer*—full or part-time non-paid center staff who perform services for the child care center and have direct or indirect contact with children at the center.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1111 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2758 (December 2007) amended by the Department of Social Services, Office of Family Support, LR 36

### Subpart 21. Child Care Licensing

#### Chapter 73. Day Care Centers

#### Subchapter B. Licensing Class "B" Regulations for Child Care Centers

#### §7355. Authority

A. - E. ...

F. Conditions for Owners, Operators, Employees and Volunteers. Any owner, operator, current or prospective employee, or volunteer of a child care facility requesting licensure by the department and/or a child care facility licensed by the Department of Social Services is prohibited from working in a child care facility if the individual discloses, or as the result of information known or received by the Department of Social Services, that individual's name is recorded on the SCR as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

1. An individual owning, operating, employed by or volunteering in a child care facility prior to January 1, 2010, licensed by the department shall be required to complete a state central registry disclosure form on or before February 1, 2010. This information shall be reported at the time of application, annually, at any time upon the request of the department, and within three working days of any such individual receiving notice of a justified (valid) determination of child abuse or neglect.

a. The owner, operator, current employee, and current employee/volunteer of the licensed child care facility shall complete, sign and date the state central registry disclosure form. The current employee/volunteer shall submit the disclosure form to the owner or operator of the facility. The owner or operator shall also be required to provide documentation of his or her state central registry disclosure form.

b. Any current employee/volunteer hired before January 1, 2010, who discloses that their name is recorded on the state central registry with a justified (valid) finding of abuse or neglect, or through reasonable suspicion, or as the result of information known or received by the Department of Social Services will have 10 calendar days to request a risk assessment evaluation in accordance with LAC 67:I.305 or shall be terminated immediately. As a condition of continued employment, the employee/volunteer shall be directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the SCR. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel that they do not pose a risk to

children. When these conditions are met, the employee/volunteer may be counted in child staff ratio. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the employee/volunteer shall be terminated immediately. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding within the required timeframe, the employee/volunteer shall continue to have direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling by the Division of Administrative Law that they do not pose a risk to children. Supervision may end effective with such a ruling from the Division of Administrative Law. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that they do pose a risk to children, they shall be terminated immediately.

2. After January 1, 2010, any prospective owner, operator, or prospective employee/volunteer of the child care facility requesting licensure by the department and/or the child care licensed by the department shall be required to complete a state central registry disclosure form. This information shall be reported at the time of application, annually, at any time upon the request of the department, and within three working days of any such individual receiving notice of a justified (valid) determination of child abuse or neglect.

a. The prospective employee/volunteer of a child care facility requesting licensure by the department and/or licensed child care facility shall complete, sign and date the state central registry disclosure form. The prospective employee/volunteer shall submit the disclosure form to the owner or operator of the facility. The owner or operator shall also be required to provide documentation of his or her state central registry disclosure form.

b. If a prospective operator, employee/volunteer discloses that his or her name is currently recorded as a perpetrator on the state central registry, the child care facility representative/prospective employer shall inform the applicant they will not be considered for employment or volunteer duties at the time due to the state central registry disclosure and the child care facility representative/prospective employer will provide the prospective employee/volunteer with the request for a risk panel evaluation form.

3. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current department licensing requirements and be available for review by Child Care Licensing and Regulatory personnel during the facility's hours of operation. They shall be kept on file a minimum of one year from termination of the employee or volunteer from the center.

4. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee or prospective employee or volunteer has falsified a SCR disclosure form stating that they are not currently

recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing to a Child Care Licensing manager at the Department of Social Services, Office of Family Support, Child Care Licensing and Regulatory Section as soon as possible, but no later than the close of business on the next working day.

5. Any state central registry disclosure form, Risk Evaluation Panel finding and Division of Administrative Law ruling that is maintained in a child care facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

6. Violations of any of the provisions of this section shall result in licensing enforcement actions up to and including revocation of the license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1635 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

#### **§7357. Definitions**

A. The following are definitions of terms used in these minimum standards.

\* \* \*

*Child Care Staff*—all full or part-time paid or non-paid staff who perform routine services for the child care center and have direct or indirect contact with children at the center. Staff includes the director, child care staff, and any other employees of the center such as the cook, housekeeper, driver, substitutes, and foster grandparents excluding extra-curricular personnel.

\* \* \*

*Department*—the Department of Social Services in Louisiana.

\* \* \*

*Employee*—all full or part-time paid child care staff who perform services for the child care center and have direct or indirect contact with children at the center.

\* \* \*

*Reasonable Suspicion*—Child Care Licensing and Regulatory personnel has or acquires information containing specific and articulable facts indicating that an owner, operator, current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor in an investigation with a justified (valid) finding currently recorded on the state central registry..

\* \* \*

*State Central Registry*—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by the Office of Community Services.

\* \* \*

*Volunteer*—full or part-time non-paid child care staff who performs services for the child care center and have direct or indirect contact with children at the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

Kristy H. Nichols  
Secretary

1001#002

## DECLARATION OF EMERGENCY

### Department of Social Services Office of the Secretary

State Central Registry—Criminal Background  
and Risk Assessment Evaluation  
(LAC 67:I.201, 203, 301, 303, 305, 307, and 309)

The Department of Social Services, Office of the Secretary, has exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953(A) to adopt the Louisiana Administrative Code (LAC) 67:I.Chapter 2. Criminal Background and State Central Registry Checks and Chapter 3. Risk Assessment Evaluation, effective January 1, 2010 pursuant to Acts 47 and 388 of the 2009 Regular Session of the Louisiana Legislature. This Emergency Rule is necessary to ensure the safety of children receiving services from employees of the department.

This Rule regulates conditions of employment for employees and potential employees with job duties within the Department of Social Services (DSS). The adoption of this Rule provides an increased measure of protection and safety for minor children receiving services from the department by identifying specific individuals with certain past criminal convictions. The Rule expands the authority of DSS to require federal criminal background checks for certain prospective (new hire or transferring) DSS employees.

The Rule also establishes a risk evaluation panel, its duties and procedures and an appeals process for the panel's decision. The Rule prohibits the employment of employees and potential employees whose duties include investigation of child abuse or neglect, the supervisory or disciplinary authority over children, direct care of a child or performance of licensing surveys if the individual's name is recorded on the state central registry, unless a risk evaluation panel determines that the individual does not pose a risk to children. The risk assessment evaluation process will also be made available to any owner, operator, current or prospective employee, or volunteer of a child care facility licensed by the department who discloses that he is currently recorded on the state central registry for a justified (valid) finding of abuse or neglect.

This Emergency Rule shall remain in effect for a period of 120 days.

## Title 67

### SOCIAL SERVICES

#### Part I. Office of the Secretary

##### Subpart 1. General Administration

#### Chapter 2. Criminal Background and State Central Registry Checks

##### §201. Introduction and Purpose

A. The Department of Social Services has a fervent commitment to protect children by preventing the employment of an individual by the department who has specific past criminal convictions, in certain positions that provide access to children and/or has been determined to be a perpetrator of abuse or neglect of a child.

B. In order to enhance the state's ability to protect children, the Louisiana Legislature enacted laws which provide for state and federal criminal background checks and a state central registry check for certain DSS employees and potential employees.

C. The department will utilize the state central registry of justified (valid) reports of abuse or neglect for clearances of certain current and potential department employees, and will prohibit these individuals from being employed when their name is recorded on the state central registry, unless a risk evaluation panel determines that the individual does not pose a risk to children.

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:

##### §203. Conditions of Employment

A. No individual shall be hired by the department whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys, until the following conditions are met.

1. The individual submits his fingerprints to the Louisiana Bureau of Criminal Identification and Information to facilitate a state and national criminal records check and it is determined that the person has not been convicted of or pled nolo contendere to a crime listed in R.S. 15:587.1(C).

2. The department has conducted a search of the state central registry and determined that the individual's name has not been recorded subsequent to January 1, 2010.

3. If the individual's name is recorded on the state central registry subsequent to January 1, 2010, a risk evaluation panel has determined in writing that the individual does not pose a risk to children.

B. Any current employee of the department whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys and whose name is recorded subsequent to January 1, 2010, shall be terminated by the department unless a risk evaluation panel has determined in writing that the individual does not pose a risk to children.

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:

### Chapter 3. Risk Assessment Evaluation

#### §301. Introduction

A. The Office of Community Services (OCS) maintains a central registry of all justified (valid) reported cases of child abuse and neglect.

B. In accordance with R.S. 46:51.2, no person shall be hired, promoted, or transferred by the department to a position for which duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys until:

1. the department has conducted a search of the state central registry of justified (valid) abuse or neglect and has determined that the individual's name is not recorded therein subsequent to January 1, 2010; or

2. if an individual's name is recorded on the state central registry subsequent to January 1, 2010, a risk evaluation panel has determined in writing that the individual does not pose a risk to children.

C. In accordance with R.S. 46:1414.1(D), any owner, operator, current or prospective employee, or volunteer of a child care facility licensed by the department who discloses that he is currently recorded on the state central registry for a justified (valid) finding of abuse or neglect shall be entitled to a risk evaluation provided by the department to determine whether the individual poses a risk to children.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Children's Code, Article 616, and Act 47, Act 221, and Act 388 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:

#### §303. Risk Evaluation Panel

A. A Risk Evaluation Panel (panel) is established to conduct risk assessment evaluations for an individual as listed in LAC 67:I.301.B and C whose name appears on the state central registry to determine if that individual poses a risk to children.

B.1. The panel shall consist of:

a. Division of Field Services Director or OCS Deputy Assistant Secretary;

b. Division of Prevention and Protective Services Director;

c. Division of Foster Care Services Director;

d. risk evaluation panel coordinator; and

e. any others designated by the DSS Deputy Secretary as appropriate designees of those listed above or as deemed necessary to convene an appropriate panel.

C. The duties of the panel shall include:

1. conducting an assessment of an individual listed in LAC 67:I.301.B and C whose name appears on the State Central Registry and has requested a risk evaluation to determine whether that individual poses a risk to children;

2. providing written notification of the decision to the individual; and

3. retaining all records of decisions.

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:

#### §305. Risk Assessment Evaluation Process

A. The risk evaluation panel will determine if the individual listed in LAC 67:I.301.B and C poses a risk to

children based on the information available in the OCS case record, and any supplemental information provided by the employee.

B. The individual requesting the risk assessment evaluation will not be present for the evaluation.

C. The prospective or current employee is responsible for providing the following documentation to the Risk Evaluation Panel to be used in conjunction with the information in the case record in making a risk determination:

1. evidence of a rehabilitation effort since the justified (valid) incident of abuse or neglect such as but not limited to employment, education, or counseling;

2. information about the individual's anticipated job responsibilities or current responsibilities; and

3. evidence of the individual's present fitness to work with children, including three letters of recommendation, one of which must be from a former employer.

D. The prospective employee must submit the information within 10 days of the request for a risk evaluation by mailing to:

Louisiana Department of Social Services  
Attention: Risk Evaluation Panel  
627 N. Fourth St. Third Floor  
Baton Rouge LA 70802

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:

#### §307. Risk Determination Criteria

A. A person determined to be a perpetrator of an incident of abuse or neglect may not automatically be denied a position or be allowed to retain a position which allows access to children.

B. The panel shall determine if an individual poses a risk to children based on the information available in the OCS case record, and any supplemental information provided by the prospective employee.

1. The following information shall be used by the panel to make its determination including, but not limited to:

a. the nature of the abuse or neglect with which the individual was identified, including whether the abuse or neglect resulted in serious injury or death to a child or children;

b. the circumstances surrounding the commission of the abuse or neglect, including the age of the perpetrator and the children, that would demonstrate unlikelihood of repetition;

c. the period of time that has elapsed since the abuse or neglect occurred and whether prior incidents of child abuse or child neglect have been indicated against the individual;

d. whether the abuse or neglect involved single or multiple child victims or whether there were more multiple allegations over a period of time;

e. the relationship of the incident of child abuse or neglect to the individual's current or conditional job responsibilities within the department or facility;

f. evidence of rehabilitation such as employment, education, or counseling since the indicated incident of abuse or neglect; and

g. letters of recommendation one of which must be from a former employer.

C. An individual determined to be a risk to children is prohibited from requesting a risk assessment evaluation for 24 months from the date of the original notice of decision issued by the risk evaluation panel.

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:

**§309. Appeals Process**

A. The risk evaluation panel shall provide the individual who is the subject of the evaluation the decision of the panel in writing.

B. The notice of decision shall contain information regarding the individual's right to appeal and request for a fair hearing.

C. The individual may file a request for an administrative appeal within 30 days of the mailing of the notice of the determination with the DSS Bureau of Appeals.

D. All decisions rendered by the administrative law judge within the Bureau of Appeals are final and such decisions shall exhaust the individual's administrative appeal rights.

E. Within 30 days after the mailing date listed on the notice of the final decision by the Bureau of Appeals, or if a rehearing is requested, within 30 days after the date of the decision thereon, the individual may obtain judicial review by filing a petition for review of the decision in the Nineteenth Judicial District Court or the district court of the domicile of the individual.

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:

Kristy Nichols  
Secretary

1001#004

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**2010-11 Commercial King Mackerel Season**

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and all rules and regulations pursuant thereto by emergency rule, and R.S. 56:6(25)(a) and 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season for the commercial harvest of king mackerel in Louisiana state waters:

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2010 and remain open until the allotted portion of the commercial king mackerel quota for the western Gulf of Mexico has been harvested or projected to be harvested.

The commission grants authority to the Secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the western Gulf of Mexico has been harvested or is projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2011, which is the date expected to be set for the re-opening of the 2011-12 commercial king mackerel season in Federal waters.

The commission also authorizes the secretary to open additional commercial king mackerel seasons in Louisiana state waters if he is informed that NMFS has opened such additional seasons and to close such seasons when he is informed that the commercial king mackerel quota for the western Gulf of Mexico has been filled, or is projected to be filled.

Effective with seasonal closures under this Emergency Rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade, or sell king mackerel, whether taken from within or without Louisiana territorial waters. Also effective with this closure, no person shall possess king mackerel in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Stephen J. Oats  
Vice-Chairman

1001#049

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**2010-11 Reef Fish Commercial Seasons**

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

The commercial fishing seasons for reef fish as listed in LAC 76:VII.335, Reef Fish – Harvest Regulations continue to remain open as of January 1 of each year unless otherwise provided for in LAC 76:VII.335 and LAC 76:VII.337, or as a result of actions by the secretary as authorized below. These commercial fishing seasons include closed seasons for some species and species groups as listed in LAC 76:VII.335 and in LAC 76:VII.337, including prohibition on harvest of goliath and Nassau groupers.

In addition, the Secretary of the Department of Wildlife and Fisheries is hereby authorized to close the season for the commercial harvest of any species or group of species of the

fishes listed in LAC 76:VII.335, Reef Fish – Harvest Regulations, in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the applicable commercial quota has been harvested in the Gulf of Mexico, and if he is requested by the Regional Administrator of NMFS that the State of Louisiana enact compatible regulations in Louisiana state waters.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to modify the commercial seasons described here in Louisiana state waters if he is informed by NMFS that the season dates for the commercial harvest of these fish species in the federal waters of the Gulf of Mexico as set out herein have been modified, and that NMFS requests that the season be modified in Louisiana state waters. Such authority shall extend through January 31, 2011.

Effective with seasonal closures under this Emergency Rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade, or sell the affected species of fish, whether taken from within or without Louisiana territorial waters. Also effective with these closures, no person shall possess the affected species of fish in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Stephen J. Oats  
Vice-Chairman

1001#048

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **2010 Recreational Reef Fish Seasons**

The reef fish fishery in the Gulf of Mexico is cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. Rules were promulgated by NMFS to enact provisions of the red snapper rebuilding plan (Reef Fish Amendment 27 / Shrimp Amendment 14). These Rules included establishing a recreational season of June 1 through September 30 of each year. A compatible season was established for Louisiana waters by the Wildlife and Fisheries Commission at their March 6, 2008 meeting. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

The Secretary of the Department of Wildlife and Fisheries is hereby authorized to close the season for the recreational harvest of red snapper or greater amberjack in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the applicable recreational quota has been harvested in the Gulf of Mexico and the recreational season closed in federal waters of the Gulf of Mexico, and if he is requested by the Regional Administrator of NMFS that the State of Louisiana enact compatible regulations in Louisiana state waters.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to modify the recreational season currently established in Louisiana state waters if he is informed by NMFS that the season dates for the recreational harvest of red snapper or greater amberjack in the federal waters of the Gulf of Mexico as set out herein have been modified, and that NMFS requests that the season be modified in Louisiana state waters. Such authority shall extend through January 31, 2011.

Stephen J. Oats  
Vice-Chairman

1001#048

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Bucks-Only Deer Hunting: South Louisiana**

Due to excessive high water from extraordinary rainfall in south Louisiana, portions of St. Mary, Assumption, Ascension, Lower St. Martin, Lafourche, Terrebonne, St. James, St. John, and St. Charles Parishes are experiencing flooding, causing a concentration of deer into what little high ground remains. Continued unrestricted hunting under these circumstances poses a potential risk of overharvest of the deer resource, eliminates fair chase, and may pose a significant safety risk to the hunting public because of the concomitant concentration of hunters in the areas where deer and other wildlife are located. Therefore, until the high water recedes, it is necessary to restrict deer hunting in the below described area to bucks only. The restricted area shall be that area which is more specifically described as follows: South of Interstate 10, West of Interstate 310, North and West of Highway 90, East of Highway 70, and East of Highway 22. It shall include the entirety of Elm Hall Wildlife Management Area. In accordance with the provisions of R.S. 56:6.1, hunting in the above described area shall be as

follows: Deer Hunting - Bucks Only. All other hunting is open. This Declaration of Emergency shall become effective December 22, 2009 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until rescinded by the secretary.

Robert J. Barham  
Secretary

1001#007

#### **DECLARATION OF EMERGENCY**

##### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

###### **Hunting Season Closure: South Louisiana**

Due to excessive high water from extraordinary rainfall in south Louisiana, portions of St. Mary, Assumption, Ascension, Lower St. Martin, Lafourche, Terrebonne, St. James, St. John, and St. Charles Parishes are experiencing flooding, causing a concentration of deer and other wildlife into what little high ground remains. Continued hunting under these circumstances poses a potential risk of overharvest of the wildlife resource, eliminates fair chase, and may pose a significant safety risk to the hunting public because of the concomitant concentration of hunters in the areas where deer and other wildlife are located. Therefore it is necessary to close the below described area to all hunting, except waterfowl hunting, until the high water recedes. The closed area shall be that area which is more specifically described as follows: South of Interstate 10, West of Interstate 310, North and West of Highway 90, East of Highway 70, and East of Highway 22. It shall include the entirety of Elm Hall Wildlife Management Area. In accordance with the provisions of R.S. 56:6.1, the above described area is hereby closed to all hunting, except waterfowl hunting. This Declaration of Emergency shall become effective December 18, 2009 and shall remain in effect for the maximum period allowed under the

Administrative Procedure Act or until rescinded by the secretary.

Robert J. Barham  
Secretary

1001#008

#### **DECLARATION OF EMERGENCY**

##### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

###### **Zone 1 Shrimp Season Extension**

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which allows the Wildlife and Fisheries Commission to delegate to the secretary of the department the powers, duties, and authority to set seasons, and in accordance with a resolution adopted by the Wildlife and Fisheries Commission on August 6, 2009 which authorized the Secretary of the Department of Wildlife and Fisheries to change the closing dates of the 2009 Fall Shrimp Season if biological and technical data indicate the need to do so or if enforcement problems develop and to close all or parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters, and to re-open these waters if significant numbers of marketable size shrimp are available for harvest, the Secretary of the Department of Wildlife and Fisheries does hereby declare that the 2009 Fall inshore shrimp season in that portion of Shrimp Management Zone 1, extending north of the south shore of the Mississippi River Gulf Outlet, including Lake Pontchartrain and Lake Borgne, shall be extended until further notice. This action became effective on December 15, 2009. The open waters of Breton and Chandeleur Sounds, as described by the double-rig line [LA R.S.56:495.1(A)(2)] shall remain open until 6 a.m., March 31, 2010.

Robert J. Barham  
Secretary

1001#006

# Rules

## RULE

### Department of Culture, Recreation and Tourism Office of Tourism

Welcome Centers (LAC 25:V:501, 503, 505 and 507)

The Louisiana Department of Culture, Recreation and Tourism, Office of Tourism, in accordance with R.S. 51:1255 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby promulgates LAC 25:V:501-507 to provide for the reserved exclusive use of welcome centers by the public to the extent and in order to ensure that such use does not conflict with the primary mission of welcome centers and in order to offset the costs associated with providing this service to the public.

#### Title 25

#### CULTURAL RESOURCES

#### Part V. Office of Tourism

#### Chapter 5. Welcome Centers

#### §501. Welcome Centers

A. The Louisiana Office of Tourism operates a system of welcome centers whose primary mission is to provide a safe, friendly environment to welcome visitors, provide visitors information about tourist attractions and resources, and to encourage visitors to spend more time in the state.

B. Welcome center facilities are available for reserved exclusive use by the public to the extent such use does not conflict with the primary mission of the welcome center and such use is consistent with these rules as well as all other laws, regulations, and policies applicable to such use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1255.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of Tourism, LR 36:50 (January 2010).

#### §503. Reservations

A. Requests to reserve a room or an area within a welcome center may be submitted for approval to the supervisor of that welcome center.

B. Requests to reserve a welcome center facility for exclusive use must:

1. be in writing on the form provided by the Louisiana Office of Tourism. The request form will include the Louisiana Office of Tourism's Usage Policies, the terms of which will be incorporated into the final written agreement for use;

2. provide the name, age, and contact information of the individual responsible for all obligations related to the use. That person shall serve as the liaison for all communications and shall be responsible for ensuring compliance with all terms of use and payment, if the request is approved; and

3. describe the nature of the event, dates and hours of the event including time required for set-up and take-down, the number of anticipated attendees, the space requested, any special requirements or requests.

#### C. Approval of the Request

1. A request for reserved exclusive use is considered approved only when the individual receives the written agreement which has been signed and approved in accordance with the policies and procedures of the Louisiana Office of Tourism. The written, signed agreement will specify all terms of the use, the effective date of the approval, all costs and fees, arrangement requirements, and the specific space authorized for use.

2. A request for reserved exclusive use is subject to availability and will only be approved if the proposed use will not, in the opinion of the Office of Tourism, negatively impact the buildings, patios, facilities, furnishings, exhibits, or grounds within or associated with the welcome center, and will not materially interfere with the fulfillment of the welcome center's primary mission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1255.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of Tourism, LR 36:50 (January 2010).

#### §505. Standard Fees

A. Standard fees for reserved exclusive use of the Capitol Park Welcome Center facilities shall be assessed as follows.

Space	Capacity	Full Day Rate (3 hours or more)	Half Day Rate (Less than 3 hours)	Evening Rate (after 4:30 pm)
Entire Building and Patio	350 seated; 600 reception	\$700	\$500	\$550/hour
Entire Building	175 seated; 400 reception	\$600	\$400	\$250/hour
Margaret Taylor Theater (includes audio/visual capabilities)	115 seated (lecture) 80 seated (classroom) 200 reception	\$425	\$275	\$150/hour
Fishbowl	75 seated (lecture)	\$175	\$125	\$100/hour
Patio	200 seated; 300 reception	\$200	\$150	\$100/hour

#### B. Additional Fees

1. Additional charges may be assessed based the nature of the requested function and/or additional requirements as agreed upon. Any additional charges will be included in the written agreement.

2. Additional charges will be assessed for damages incurred and clean-up. These charges are in addition to all other fees and charges and are payable upon notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1255.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of Tourism, LR 36:50 (January 2010).

#### §507. Discounts; Fee Waivers

A. No fees shall be assessed for reserved exclusive use of welcome center facilities by agencies of the Office of the Lieutenant Governor, the Department of Culture, Recreation

and Tourism, or any entity hosting a program in cooperation with the agencies of the Office of the Lieutenant Governor or the Department of Culture, Recreation and Tourism.

B. The Assistant Secretary of the Office of Tourism or his designee may grant other state agencies a \$25 discount off of the standard fees.

C. From time to time, as the Assistant Secretary of the Office of Tourism or his designee deems necessary or appropriate, variations in occupancy requirements, fees, and discounts may be allowed to encourage use of the welcome center facilities.

D. No fees will be charged to the general public whether they enter as tour group participants or individuals during regular operating hours at any Louisiana welcome center. However, adult and school age groups should advise the welcome center supervisor if a welcome center visit is planned, to ensure adequate preparation and attention as well as a quality experience and a proper visitor count.

E. At this time, only the Capitol Park Welcome Center in Baton Rouge has an established fee schedule for reserved exclusive use of its facilities. All other welcome center facilities may be reserved for exclusive use by the public at the cost, if any, incurred by the Louisiana Office of Tourism to accommodate said use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1255.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of Tourism, LR 36:50 (January 2010).

James "Jim" Hutchison  
Assistant Secretary

1001#013

**RULE**

**Department of Economic Development  
Office of the Secretary  
and  
Office of Business Development**

Regional Awards and Matching Grant Awards Program  
(LAC 13:III.1709)

The Department of Economic Development, Office of the Secretary and Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 36:104 and 36:108 hereby amends the following rules of the Regional Awards and Matching Grant Awards Program.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part III. Financial Assistance Programs**

**Chapter 17. Regional Awards and Matching Grant Program**

**§1709. Regional Awards ("Tier 1")**

A. Regional awards shall be in an amount appropriated by the Louisiana Legislature to this program and shall be allocated to the eight regions of this state in accordance with the map to be provided by LED. The regions will closely approximate the regions of the state presently served by

LED regional representatives. Subject to Subsection E below, each region shall receive such portion of the available amount in accordance with its percentage of population of the state as established by the most recent census of the state. The secretary of LED shall determine the association of the EDOs for each region with which the department will enter into a CEA through which deliverables reflective of the goals and objectives of this program shall be established. The EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall be responsible for coordination within the region to provide for the delivery of certain administrative documents. The costs related to the production of these documents are to be paid for using funds provided by Louisiana Economic Development (LED).

B. - D. ...

E. Notwithstanding population percentages for each region, the minimum funding for any region is \$150,000 provided that the appropriation for the Regional Awards Program is \$1,800,000 or greater. In the event that the appropriation for the Regional Awards Program is less than \$1,800,000, the secretary of LED is empowered to establish a funding distribution for the eight regional groups so as to ensure an appropriate distribution of resources. The secretary of LED is empowered to place caps on the maximum amount of funding a regional EDO shall receive so as to ensure an appropriate distribution of resources.

F. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009), LR 36:51 (January 2010).

Kristy Mc Kearn  
Undersecretary

1001039

**RULE**

**Department of Economic Development  
Office of Business Development**

Small and Emerging Business Development Program  
(LAC 19:II.105, 107, 507 and 903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Economic Development, Office of Business Development, hereby amends the following rules and regulations relative to the Small and Emerging Business Development Program. This action complies with the statutory law administered by the agency, as authorized by R.S. 51:941 et seq.

**Title 19**

**CORPORATIONS AND BUSINESS**

**Part II. Small And Emerging Business Development Program**

**Chapter 1. General Provisions**

**§105. Definitions**

A. When used in these regulations, the following terms shall have meanings as set forth below.

\* \* \*

*Small and Emerging Business (SEB)*—a small business organized for profit and performing a commercially useful function which is at least 51 percent owned and controlled by one or more small and emerging business persons and for which the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business. A nonprofit organization is not a small and emerging business for purposes of this Chapter.

*Small and Emerging Business Person*—a citizen or legal resident of the United States who has resided in Louisiana for at least 12 consecutive months and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:753 (April 2004), LR 33:2030 (October 2007), LR 36:51 (January 2010).

#### **§107. Eligibility Requirements for Certification**

A. - B.2. ...

3. Net Worth. The person's net worth may not exceed \$400,000. The market value of the assets of the person's small and emerging business, personal residence, 401K, IRA, and other legal retirement funds will be excluded from the net worth calculation.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:754 (April 2004), LR 33:2030 (October 2007), LR 36:52 (January 2010).

#### **Chapter 5. Mentor-Protégé Credit Program §507. Internal Controls and Monitoring**

A. - C.1. ...

2. reviewing quarterly progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement, and a final report within 30 days following the completion of the agreement, or by July 31 each year, whichever comes first.

C.3. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51.942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:546 (April 2003), LR 30:757 (April 2004), LR 34:603 (April 2008), LR 36:52 (January 2010).

#### **Chapter 9. Small Business Bonding Program §903. Direct Bonding Assistance**

A. Direct Bonding Assistance. All certified active small and emerging construction businesses, and all other certified SEBs (non-construction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or \$200,000 on any single project. Small and emerging construction businesses with the status of certified active or graduated may be eligible for surety bond guarantee assistance until June 30, 2012. After June 30, 2012, only certified active small and emerging businesses may be eligible for surety bond guarantee assistance. All obligations, whether contractual or financial, will require the approval of the undersecretary.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51-942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:430 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:547 (April 2003), LR 30:758 (April 2004), LR 36:52 (January 2010).

Kristy Mc Kearn  
Undersecretary

1001#040

#### **RULE**

#### **Department of Economic Development Office of Business Development Office of Entertainment Industry Development and Office of the Governor Division of Administration**

Motion Picture Investor Tax Credit Program  
(LAC 61:I.1601-1613)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 47:6007, the Department of Economic Development and the Division of Administration hereby adopts the following Rules.

#### **Title 61**

#### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 16. Louisiana Entertainment Industry Tax Credit Programs**

#### **Subchapter A. Motion Picture Investor Tax Credit Program**

#### **§1601. Purpose**

A. The purpose of this Chapter is to implement the Motion Picture Investor Tax Credit Program as established by R.S. 47:6007.

B. This Chapter shall be administered to achieve the following:

1. to encourage development of a strong capital and infrastructure base within the state for the motion picture and related industries;

2. to achieve a self-supporting, independent, indigenous industry; and

3. to encourage development of state of the art motion picture production and post-production facilities:

a. in the short-term, to attract private investors in state-certified productions and state-certified infrastructure projects;

b. in the long-term, to encourage the development of a skilled state workforce trained in the film and video industry.

C. This Chapter shall apply to any person:

1. claiming a credit;
2. transferring or selling a credit; or
3. acquiring a credit under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:52 (January 2010).

### §1603. General Description

A. The program offers two distinctive incentives: production and infrastructure.

#### 1. Production

a. If the total base investment exceeds \$300,000, each investor shall be allowed a tax credit based upon their investment as follows:

i. for state-certified productions initially certified on or after January 1, 2004, but before January 1, 2006:

- (a). a 10 percent tax credit, if the total base investment is more than \$300,000 and less than \$8,000,000;
- (b). a 15 percent tax credit, if the total base investment is more than \$8,000,000.

ii. a 25 percent tax credit for state-certified productions initially certified on or after January 1, 2006, but before July 1, 2009;

iii. a 30 percent tax credit for state-certified productions initially certified on or after July 1, 2009.

b. An additional payroll tax credit shall be allowed for any base investment expended on behalf of employing Louisiana residents on state-certified productions as follows:

- i. a 10 percent tax credit for state-certified productions initially certified before July 1, 2009; or
- ii. a 5 percent payroll tax credit for state-certified productions initially certified on or after July 1, 2009.

#### 2. Infrastructure

a. If the total base investment exceeds \$300,000, each investor shall be allowed a tax credit based upon their investment as follows:

i. a 40 percent tax credit for state-certified infrastructure projects, for which applications for initial certification were received by the office and the department prior to January 1, 2009:

(a). for applications received before August 1, 2007, there shall be no per project cap on tax credits, except as otherwise provided by the terms of the initial certification;

(b). for applications received after August 1, 2007, the total tax credit allowed for a state-certified infrastructure project shall not exceed \$25,000,000 per project.

B. Investor tax credits shall be transferable under the following conditions.

1. Tax credit shall be earned by investors at the time expenditures are made in a state-certified production or state-certified infrastructure project.

2. Credits become transferable only after final certification of expenditures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:53 (January 2010).

### §1605. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6007, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

*Allocatee*—an individual or entity that received an allocation of investment tax credits.

*Allocator*—an individual or entity that makes an allocation of investment tax credits.

*Base Investment*—cash or cash equivalent investment made and used for:

a. production expenditures in the state for a state-certified production;

b. infrastructure expenditures in the state for the development of a state-certified infrastructure project. Infrastructure Expenditures shall include, but are not limited to, expenditures for infrastructure project development, film and television production spaces, post-production equipment, facilities, equipment for distribution companies domiciled within Louisiana, transportation equipment, land acquisition and closing costs, construction costs, design and professional consulting fees associated with the state-certified infrastructure project, furniture, fixtures, equipment, and financing costs. Infrastructure expenditures shall not include indirect costs, any amounts that are later reimbursed by a third party, any costs related to the allocation or transfer of tax credits, any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the state-certified Infrastructure Project.

*Begin Construction*—for projects with applications filed after August 1, 2007, construction of an infrastructure project shall begin when:

a. in the case of a new building, either:  
i. materials to be used in the project, worth more than 5 percent of the construction budget, are placed at the project site; or

ii. other work is performed on the site which is visible from a simple inspection and reasonably indicates that the work has begun, such as substantial land fill, soil reinforcement or pouring of a foundation. The following are examples of services which do not indicate that work has begun; services of surveyors or engineers; cutting or removal of trees; demolition of existing structures or clearing of the land surface;

b. in the case of a retrofit project to an existing structure:

i. materials to be used in the project, worth more than 10 percent of the construction budget, are placed at the project site; or

ii. equipment to be used in the project, worth more than 20 percent of the construction budget, is placed and operational at the project site.

*Commencement of Production*—beginning principal photography or equivalent process.

*Commissioner*—Commissioner of Administration.

*Department*—Louisiana Department of Economic Development, or its successor.

*Developer*—a person responsible for the development of a state-certification infrastructure project.

*Director*—Director of the Office of Entertainment Industry Development (the office).

*Division*—Division of Administration.

*Expended in the State*—

a. an expenditure to lease immovable property located in the state;

b. an expenditure as compensation for services performed in the state; or

c. an expenditure to purchase or lease tangible personal property within the state where the transaction is subject to the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950:

i. a transaction that is subject to the states sales or lease tax provision of Title 47 of the Louisiana Revised Statutes of 1950 shall include transactions that are also subject to statutory exclusion or exemption.

*Expenditure*—actual payment of cash or cash equivalent, paid by or on behalf of a state certified production or state-certified infrastructure project, exchanged for goods or services, as evidenced by an invoice, receipt or other such document.

*Indirect Costs*—costs of operation that are not directly associated with a specific production or infrastructure project, such as clerical salaries, general administrative costs and other overhead charges.

*Louisiana Resident, Resident, or Resident of Louisiana*—a natural person domiciled in the state of Louisiana. Domicile may be established:

a. by maintaining a permanent place of abode within the state and spending in the aggregate more than six months of each year in the state; or

b. by agreeing in writing to file a Form IT 540 or Form IT 540B as applicable, for the taxable year employed by the motion picture production company, provided the person subsequently files the form and pays any Louisiana income tax due.

*Non-Applicable Production Expenditures*—the following expenses are not eligible to earn tax credits:

a. expenditures for marketing and distribution;

b. non-production related overhead;

c. amounts reimbursed by the state or any other governmental entity;

d. costs related to the transfer of tax credits;

e. amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production;

f. the application fee;

g. state or local taxes;

h. any other expenditure not allowed by law or regulation.

*Office*—Office of Entertainment Industry Development.

*Payroll*—all salary, wages and other compensation, including benefits paid to an employee and taxable in this state. However, payroll for purposes of the additional tax credit for Louisiana-resident payroll shall exclude any

portion of an individual salary in excess of one-million dollars.

*Person*—there are two kinds of persons; natural and juridical.

a. A natural person is a human being.

b. A juridical person is an entity to which the law attributes personality, such as a corporation, partnership or limited liability company.

*Production Expenditures*—preproduction, production and postproduction expenditures directly incurred in this state that are directly used in a state-certified production, whether the production company directly contracts or subcontracts such work, including without limitation the following:

a. set construction and operation;

b. wardrobes, make-up, accessories, and related services;

c. costs associated with photography and sound synchronization, lighting, and related services and materials;

d. editing and related services;

e. rental of facilities and equipment;

f. leasing of vehicles;

g. costs of food and lodging;

h. digital or tape editing, film processing, transfer of film to tape or digital format, sound mixing, special and visual effects (if services are performed in Louisiana);

i. total aggregate payroll (limited to the amount of total payroll expended in Louisiana and which is taxable to the recipient in Louisiana. A Louisiana tax return is required to be filed reflecting the amount of compensation paid while the recipient is located in Louisiana. If the recipient is not a Louisiana resident, then a non-resident income tax return should be filed);

j. music, if performed, composed or recorded by a Louisiana resident, or released or published by a Louisiana-domiciled and headquartered company;

k. airfare, if purchased through a;

l. insurance costs or bonding, if purchased through a Louisiana company;

m. payments to a loan-out or personal services corporation for the services of an out-of-state hire are allowed as long as the services are performed in Louisiana on a state certified production;

n. cost of the independent audit.

*Production Facility*—a physical facility that provides the goods or services necessary for completing the major activities of motion picture production.

*Secretary*—Secretary of the Department of Economic Development.

*Source within the State*—a physical facility in Louisiana, operating with posted business hours and employing at least one full-time equivalent employee.

*State-Certified Infrastructure Project*—shall mean a film, video, television, and digital production and postproduction facility, and movable and immovable property and equipment related thereto, or any other facility which supports and is a necessary component of such proposed state-certified infrastructure project, all as determined and approved by the office, the Secretary of the Department of Economic Development, and the Division of Administration under such terms and conditions as are authorized by this Section. The term *infrastructure project*

shall not include movie theaters or other commercial exhibition facilities.

*State-Certified Production*—a production approved by the office and the secretary which is produced by a motion picture production company domiciled and headquartered in Louisiana and which has a viable multi-market commercial distribution plan.

*Transferee*—an individual or entity that receives a transfer of investor tax credits.

*Transferor*—an individual or entity that makes a transfer of an investor tax credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:53 (January 2010).

## **§1607. Certification Procedures**

### **A. Application**

1. An application for initial certification shall be submitted with an application fee payable to the Office, as required by R.S. 47:6007.D(2)(b).

a. All applications shall include information as required by R.S. 47:6007.D(2)(a).

b. In addition, the following program specific information is required.

#### **i. Production:**

(a) working title of the production. Should the title change, the state-certified production needs to inform the office as soon as that change is made;

(b) name of the requesting production company;

(c) name, telephone number, e-mail address and attesting signature of the requesting production company's contact person;

(d) approximate beginning and ending date of production in Louisiana;

(e) Louisiana office address;

(f) telephone number of requesting company's Louisiana office address;

(g) estimated total production-related costs of production;

(h) estimated total amount of production-related costs to be expended in Louisiana;

(i) estimated total payroll to be paid by the requesting production company to Louisiana residents employed by the requesting production company in connection with the production;

(j) a preliminary budget including the estimated Louisiana payroll and estimated in-state investment;

(k) a copy of script (including synopsis) will be made available to OEID and subsequently returned to the applicant;

(l) list of principal creative elements such as principal cast, producer, and director; and

(m) facts sufficient for the office and the department to determine each of the following:

(i) that the requesting production company is a motion picture production company as defined in R.S. 47:6007(B)(6);

(ii) that the requesting production company is domiciled and headquartered in Louisiana; and

(iii) that the requesting production company has either a viable multi market distribution plan or

a signed distribution agreement with either a major theatrical exhibitor, television network or cable television programmer for distribution of the production.

#### **ii. Infrastructure:**

(a) working name of the infrastructure project;

(b) name of the requesting infrastructure company;

(c) name, telephone number, e-mail address and attesting signature of the requesting infrastructure company's contact person;

(d) approximate beginning and ending date of construction in Louisiana;

(e) Louisiana office address;

(f) telephone number of requesting company's Louisiana office address;

(g) estimated total project-related costs or total costs associated with the infrastructure project;

(h) a preliminary operating budget including the estimated Louisiana payroll and estimated in-state investment;

(i) a detailed business plan outlining the exact proposed costs;

(j) total number of jobs to be created by the infrastructure project.

B. Qualification. The office and the secretary, and in the case of infrastructure projects, the division, shall determine whether a production or infrastructure project qualifies for certification, by meeting all requirements of R.S. 47:6007 and these regulations, and taking the following factors into consideration:

1. the impact of the production or infrastructure project on the immediate and long-term objectives of R.S. 47:6007;

2. the impact of the production or infrastructure project on the employment of Louisiana residents;

3. the impact of the production or infrastructure project on the overall economy of the state.

### **C. Initial Certification**

1. After review and upon a determination of qualification, initial certification will be issued as follows.

#### **a. Production**

i. The office and the department shall issue an initial certification letter to the applicant, verifying the status of the production as a state certified production.

#### **b. Infrastructure**

i. The office, the department and the division shall issue an initial certification letter to the applicant, verifying the status of the project as a state certified infrastructure project.

2. Additional information may be requested by the office, the department and/or the division in order to make a determination of eligibility for the program.

3. Initial certifications shall be issued in the amount determined to be eligible, and:

a. shall contain a unique identifying number for each production or project;

b. may require state-certified productions to display an animated state brand or logo as a condition for receiving tax credits.

#### **4. Duration of Effect**

a. Once an initial certificate is issued by the office, the department (and the division where appropriate), the

applicant or official representative must countersign and return an original to the office, within 30 business days, acknowledging initial certification status.

b. For productions, initial certification shall be effective for a period 12 months prior to and 12 months after the date of initial certification, unless the production has commenced, in which case the initial certification shall be valid until the production is completed.

**D. Final Certification; Audit Requirements**

1. Prior to any final certification of credits, the motion picture production company applicant shall submit to the office a notarized statement demonstrating conformity with and agreeing to the following:

a. to pay all undisputed legal obligations incurred in the state;

b. to publish upon completion of principal photography a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place, notifying creditors to file any claims within a specific date;

c. that the outstanding obligations are not waived should a creditor fail to file by the specific date;

d. to delay any claims for credits until the office delivers written notice to the Secretary of the Department of Revenue that the production company has fulfilled all requirements for the credit.

2. When requesting final certification of credits, the motion picture production company or infrastructure project applicant shall submit to the office the following:

a. a cost report, certified by a state licensed, independent certified public accountant and complying with the minimum standards as required by R.S. 47:6007.D(2)(d). The cost report may be subject to additional audit by the department, the division, or the Department of Revenue, at the applicants expense;

b. additional information as may be requested.

3. After review and upon a determination of qualification, a final tax credit certification letter indicating the amount of tax credits certified for the production or infrastructure project will be issued by the director, the secretary (or his designee) and also in the case of infrastructure projects, the commissioner.

4. Multiple requests for final certification may be submitted.

a. Each submission must be accompanied by an audited cost report indicating expenditures.

b. Two submissions shall be certified at no additional fee by the office.

c. Additional charges may apply for three or more certification requests.

**E. Appeal Process.** In the event that an application for initial or final certification is denied:

1. the office shall promptly provide written notice of such denial to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means;

2. the applicant may appeal as follows:

a. an applicant may appeal within 30 days from receipt of a denial. Receipt will be conclusively presumed from the sending of the denial by electronic mail to an address provided by the applicant or by a return receipt evidencing delivery by U.S. Postal Service or private carrier;

b. the appeal is made by delivery of a written objection, with supporting documentation to the secretary and also in the case of infrastructure projects to the commissioner;

c. within 30 days of receipt of a timely appeal, the secretary (or his designee) and the commissioner, where applicable, will review the appeal, and issue a joint written determination. The secretary and the commissioner may extend the time for the determination for an additional 30 days. In the event the secretary and the commissioner do not agree, or fail to issue a determination within the required time, the appeal is deemed denied;

d. the written determination shall be the final agency decision of the department, and the division where applicable;

e. the applicant may appeal an adverse decision to the Nineteenth Judicial District Court.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:1125.1.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:55 (January 2010).

**§1609 Additional Program Provisions - Production**

**A. Payroll Tax Credit**

1. To the extent base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production:

a. for state-certified productions initially certified before July 1, 2009, each investor shall be allowed an additional tax credit of 10 percent of such payroll;

b. for state-certified productions initially certified after July 1, 2009, each investor shall be allowed an additional tax credit of 5 percent of such payroll.

2. However, if the payroll to any one person exceeds \$1,000,000, this additional credit shall exclude any salary for that person in excess of \$1,000,000.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:1125.1.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:56 (January 2010).

**§1611. Additional Program Provisions—Infrastructure**

**A.** Tax credits may be granted only for infrastructure projects directly related to the acquisition and construction of a film, video, television, or video production or postproduction facility and shall not apply to any infrastructure project such as a hotel or lodging facility, golf course, or retail shopping facility or other facility which the department and the division deem unrelated to such purposes.

1. If an infrastructure project may be used for other purposes unrelated to the production or postproduction activities, tax credits may be granted for that portion of the project that is deemed by the department and the division to be necessary to support or secure production or postproduction activities.

2. In the case of immovable assets deemed related, an applicant must provide assurances that:

a. such assets will exclusively support the initially certified film infrastructure project; and

b. that the applicant will not divert the use of the assets to purposes that do not promote or provide for the productions within the state of Louisiana.

3. In the case of movable assets deemed related, an applicant must provide assurances that:

a. the moveable assets shall remain in Louisiana, for as long as specified in any agreements pursuant to §1611.A.4 below;

b. be used in the production of motion pictures or other visual media productions within the state of Louisiana; and

c. used for not less than 80 percent of the asset's useful life.

4. Assurances may be secured by appropriate agreements, including, but not limited to the following terms and conditions:

a. a requirement of approval prior to sale of such assets;

b. a requirement for a minimum number of years before such assets may be transferred to a different owner;

c. limitations on transferability of the tax credits for current or future holders;

d. a reserve fund that may be re-captured by the state; and/or

e. a structured release of tax credits.

5. Any conditions to meet the requirements of this Sub-section shall be explicitly stated in the initial certification issued for the project.

a. In the event an applicant fails to meet the conditions, as specified in the certification letter, any such acts, omissions or failures shall constitute a default, and the office shall retain all rights to modify the terms and conditions of the certification, and to reclaim disbursed credits in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless the office has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

B. For infrastructure applications received prior to August 1, 2007:

1. the applicant shall have 24 months from the date of approval of the rules or January 1, 2008, whichever is earlier, in which to qualify for the 40 percent tax credits earned on expenditures;

3. a minimum of 20 percent or \$10,000,000 of the total base investment (as provided for in the initial certification) that is unique to film production infrastructure shall be expended before any infrastructure tax credits can be earned.

4. payment of tax credits earned may be structured over the course of two or more tax years, and may be made after the year expenditures are made, as provided for in the initial certification.

C. For infrastructure applications received after August 1, 2007 and before January 1, 2009:

1. the tax credit shall be 40 percent of the base investment expended in this state on projects, provided that:

a. the total base investment expended in this state, exceeds \$300,000;

b. the total tax credit allowed shall not exceed \$25,000,000;

2. if all or a portion of an infrastructure project is a facility which may be used for other purposes unrelated to production or postproduction activities, then no tax credits shall be earned on such multiple-use facilities until the production or postproduction facility is complete;

3. construction of the infrastructure project shall begin within six months of the preliminary certification;

4. credits may not be earned until 25 percent of the total base investment, provided for in the preliminary certification of an infrastructure project, has been certified as expended;

5. no tax credit shall be allowed for expenditures made for any infrastructure project after December 31, 2008, unless 50 percent of the total base investment provided for in the initial certification of the project has been expended prior to that date. The expenditures may be finally certified at a later date;

a. transactions qualifying toward the 50 percent expenditure requirement include, but are not limited to, an arm's length transaction in which the obligation is secured by the subject of the transaction and the maturity date for such obligation occurs after December 31, 2008, if such transaction was executed on or before December 31, 2008. However, such transactions shall not qualify to earn tax credits, or otherwise be deemed to be expenditures, until actual payments are made and the transaction meets the definition of *expenditure* provided in §1605.B above;

6. expenditures shall be certified by the department, office and division and credits are not transferable until such certification;

7. for purposes of allowing tax credits against state income tax liability and transferability of the tax credits, the tax credits shall be deemed earned at the time expenditures are made, provided that all requirements of this Subsection have been met and after the tax credits have been certified;

8. the department, office and division may require the tax credits to be taken and/or transferred in the period in which the credit is earned or may structure the tax credit in the initial certification of the project to provide that only a portion of the tax credit be taken over the course of two or more tax years;

9. the credit shall be allowed against the income tax for the taxable period in which the credit is earned or for the taxable period in which initial certification authorizes the credit to be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:56 (January 2010).

### **§1613. Application of the Tax Credit**

A. Prior to claiming a tax credit on any tax return, or transferring any tax credit, a person must apply for and obtain a final certification. The investor tax credit may be earned, transferred, allocated, and claimed as follows.

1. Earn. Individuals or entities may earn investor tax credits pursuant to R.S. 47:6007(C)(1).

a. Once tax credits are earned by an individual or entity, such individual or entity and any subsequent transferee, may transfer or allocate the investor tax credits.

2. Transfer. Any motion picture investor tax credits not previously claimed by any taxpayer against its income tax may be transferred or sold to another Louisiana taxpayer or to the office, pursuant to R.S. 47:6007(C)(4).

a. If the investor tax credits (evidenced by a certification letter) are transferred to the office:

i. on and after January 1, 2007 and prior to December 31, 2008 the state shall make payment to the investor at a value of 72 percent of the face-value of the credits;

ii. on January 1, 2009 and every second year thereafter, the percent of the value of the tax credits paid by the state shall increase 2 percent until the percentage reaches 80 percent;

iii. for state-certified productions which receive initial certification on or after July 1, 2009, the state shall make payment to the investor at a value of 85 percent of the face-value of the credits.

3. Allocate. If the investor tax credits are earned by, or allocated or transferred to, an entity not taxed as a corporation, the entity may allocate the credit by issuing ownership interests to any individuals or other entities on such terms that are agreed to by the relevant parties and in accordance with the terms of the allocating entity's operating agreement or partnership agreement. These terms may result in the allocation of up to 100 percent of the investor tax credits to any individual or entity regardless of the federal tax treatment of the allocation:

a. the allocating entity:

i. may be treated as a partnership for federal or state tax purposes; or

ii. may be treated as an entity that is disregarded as an entity separate from its owners for federal or state tax purposes, and in which case, each holder may agree that it will not treat the allocating entity as a partnership or itself as a partner or the ownership interest in the allocating entity as a partnership interest for federal tax or state tax purposes.

4. Claim. Tax credits may be claimed as follows:

a. an owner of tax credits may apply the credits to offset an outstanding Louisiana income tax liability for any tax year beginning in the year that the investor initially earned the tax credit or in any year thereafter within the 10 year carry forward period;

b. in the case of tax credits owned (held) by an entity not taxed as a corporation, the credits shall be deemed to flow through or be allocated to partners or members at the end of the tax year in which the entity acquired the credits unless the partnership or membership agreement provides otherwise;

c. any individual or entity shall be allowed to claim the investor tax credit against its Louisiana income tax liability:

i. whether or not any such individual is a Louisiana resident; and

ii. whether or not any such entity is domiciled in Louisiana, organized under Louisiana law, or headquartered in Louisiana;

d. an investor tax credit, in the hands of the taxpayer that earned the credit or received it by flow-

through, cannot be used to eliminate any penalties and interest on overdue income taxes from prior tax years:

i. however, an investor tax credit that is purchased is treated as property and can be applied to penalties and interest on overdue income taxes from prior tax years pursuant to R.S. 47:1675(H)(1)(c):

(a) penalties and interest will continue to accrue until the taxes on which such penalties and interest are accruing are paid;

(b) the date of payment is the date that the Louisiana Department of Revenue receives a return from a taxpayer on which the investor tax credits are claimed.

B. If the investor tax credits (evidenced by a tax credit certification letter) are transferred or allocated as provided herein.

1. The transferor shall submit to the office the original certificate of ownership, evidencing the investor tax credits being transferred or allocated, as required by R.S. 47:6007(C)(5).

2. After receipt, the office may issue to each transferee or allocatee, a certificate of ownership signed by the director reflecting:

a. such transferee's or allocatee's name;

b. the dollar amount of investor tax credits transferred or allocated;

c. the calendar year in which the investor tax credits were originally earned;

d. the state-certified infrastructure project or the state-certified production with respect to which such investor earned the investor tax credits; and

e. the identifying number assigned to such state-certified infrastructure project or state-certified production.

3. If the certificate of ownership submitted evidences more investor tax credits than actually transferred or allocated, then the office may issue an additional certificate of ownership, reflecting any remaining investor tax credit balance.

4. Any person or entity engaged in the business of buying and reselling tax credits may elect to maintain its certificate of ownership on file with the office, such that it need not surrender, and have reissued, its certificate of ownership each time it sells a tax credit.

a. In such cases, the office may issue comports certificates of ownership to transferees or allocates, designated by the transferor or allocator in writing, until such time as the tax credits represented in the original certificate have been exhausted.

5. Any taxpayer claiming investor tax credits against its Louisiana income tax liability shall submit to the Department of Revenue, with its Louisiana income tax return for the year in which the taxpayer is claiming the investor tax credits, an original certificate of ownership issued by the office or the transfer notice pursuant to this rule, evidencing the dollar amount of the investor tax credits being claimed.

6. The failure of the office to timely issue a certificate of ownership in accordance with this rule shall not:

a. void or otherwise affect, in any way, the legality or validity of any transfer of investor tax credits;

b. prohibit any Louisiana taxpayer from claiming investor tax credits against its Louisiana income tax liability,

if the investor tax credits are otherwise transferred or claimed in accordance with R.S. 47: 6007 and these rules; or  
c. result in any recapture, forfeiture or other disallowance of investor tax credits under R.S. 47:6007(E) or (F) or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:57 (January 2010).

Kristy Mc Kearn  
Undersecretary

1001#037

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Carnegie Credit for Middle School Students (LAC 28:CXV.2321)

Editor's Note: This Rule is being repromulgated to correct a citation. The original Rule may be viewed on page 2319 in the November 20, 2009 issue of the *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2321. Carnegie Credit for Middle School Students. This policy revision adds Introduction to Business Computer Applications to the list of courses which middle school students may take for high school Carnegie credit. This policy revision is being revised so that middle school students can take this course for high school credit. This course is a prerequisite for many career/tech courses.

## Title 28 EDUCATION

### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 23. Curriculum and Instruction

##### §2321. Carnegie Credit for Middle School Students

A. Students in grades five through eight are eligible to receive Carnegie credit for courses in the high school program of studies in mathematics, science, social studies, English, foreign language, keyboarding/keyboarding applications, introduction to business computer applications, or computer/technology literacy.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1293 (June 2005), amended LR 33:430 (March 2007), LR 33:2601 (December 2007), LR 34:609 (April 2008), LR 34:2031 (October 2008), LR 35:443 (March 2009), LR 35:2319 (November 2009), repromulgated LR 36:59 (January 2010).

Jeanette B. Vosburg  
Executive Director

1001#078

## RULE

### Board of Elementary and Secondary Education

Public Comments (LAC 28:I.713)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended the *Louisiana Administrative Code*, Title 28, Part I, §713.Public Comments. BESE is removing the following notation in Section 713: "NOTE: It should be noted that BESE meetings, while open to the public, are not public hearing forums; therefore, public comments shall be allowed at the discretion of the presiding officer or chair, subject to the provisions provided herein".

## Title 28 EDUCATION

### Chapter 7. Operations

#### Part I. Board of Elementary and Secondary Education

##### §713. Public Comments

NOTE: Repealed.

A. - A.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 42:5(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:422 (March 2008), amended LR 36:59 (January 2010).

Jeanette B. Vosburg  
Executive Director

1001#056

## RULE

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Control of Emissions of Nitrogen Oxides  
(LAC 33:III.2201 and 2202)(AQ305)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.2201 and 2202 (Log #AQ305).

This Rule provides a new contingency plan to further control emissions of nitrogen oxides (NO<sub>x</sub>) from facilities located in the Baton Rouge area (i.e., the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) and the Region of Influence (i.e., the parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana) in the event that EPA notifies the department that the Baton Rouge area has exceeded the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone and contingency has been triggered. This Rule amends the contingency plan to extend the applicability of the regulations by two months. There is evidence that many of the past violations of the ozone standard have occurred outside the ozone season defined in LAC 33:III.Chapter 22 (i.e., before May 1 and after September 31). It is expected that extending the use of NO<sub>x</sub> controls beyond the ozone season may prevent some of these violations. This Rule also modifies definitions and makes revisions to clarify the

regulations. This Rule is also a revision to the Louisiana State Implementation Plan for air quality. The basis and rationale for this Rule are to provide a necessary element in the State Implementation Plan revisions that will occur when the Baton Rouge Nonattainment Area is redesignated to attainment and to continue to provide protection of human health and welfare. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 22. Control of Emissions of Nitrogen Oxides (NO<sub>x</sub>)**

**§2201. Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence**

A. - A.1. ...

2. The provisions of this Chapter shall apply during the *ozone season*, as defined in Subsection B of this Section, of each year.

3. ...

B. Definitions. Unless specifically defined in this Subsection or in LAC 33:III.111 or 502, the words, terms, and abbreviations in this Chapter shall have the meanings commonly used in the field of air pollution control. For purposes of this Chapter only, the following definitions shall supersede any definitions in LAC 33:III.111 or 502.

\*\*\*

*Affected Facility*—any facility within the Baton Rouge Nonattainment Area with one or more affected point sources that collectively emit or have the potential to emit 25 tons or more per year of NO<sub>x</sub>, unless exempted in Subsection C of this Section, or any facility within the Region of Influence with one or more affected point sources that collectively emit or have the potential to emit 50 tons or more per year of NO<sub>x</sub>, unless exempted in Subsection C of this Section. Exempt sources in a facility shall not be included in the determination of whether it is an affected facility.

\*\*\*

*Low Ozone Season Capacity Factor Boiler or Process Heater/Furnace*—a boiler or process heater/furnace in the Baton Rouge Nonattainment Area with a maximum rated capacity greater than or equal to 40 MMBtu/hour and an ozone season average heat input less than or equal to 12.5 MMBtu/hour, using a 30-day rolling average; or in the Region of Influence with a maximum rated capacity greater than or equal to 80 MMBtu/hour and an ozone season average heat input less than or equal to 25 MMBtu/hour, using a 30-day rolling average.

\*\*\*

*Ozone Season*—except as provided in LAC 33:III.2202, the period May 1 to September 30, inclusive, of each year.

\*\*\*

*Thirty-Day (30-Day) Rolling Average*—an average, calculated daily, of all hourly data for the last 30 days for an affected point source. At the beginning of each ozone season, use one of the following methods to calculate the initial 30-day averages:

a. calculate and record the average of all hourly readings taken during the first day of the ozone season for day one, then the average of all hourly readings taken during

the first and second days for day two, and so on until the first full 30-day average falling entirely within the ozone season is reached;

b. calculate and record a 30-day rolling average for day one of the ozone season using the hourly readings from that day and the previous 29 calendar days, for the second day of the ozone season using the readings from the first two ozone season days and the preceding 28 calendar days, and so on until the first full 30-day average falling entirely within the current ozone season is reached; or

c. calculate and record a 30-day rolling average for day one of the ozone season using the hourly readings from that day and the last 29 days of the previous ozone season, for the second day of the ozone season using the readings from the first two current ozone season days and the last 28 days of the previous ozone season, and so on until the first full 30-day average falling entirely within the current ozone season is reached.

\*\*\*

C. Exemptions. The following categories of equipment or processes located at an affected facility within the Baton Rouge Nonattainment Area or the Region of Influence are exempted from the provisions of this Chapter:

1. - 3.b. ...

4. *low ozone season capacity factor boilers and process heater/furnaces*, as defined in Subsection B of this Section, in accordance with Paragraph H.11 of this Section;

5. - 5.g. ...

6. any point source, in accordance with Paragraph H.12 of this Section, that operates less than 3 hours per day, using a 30-day rolling average, during the ozone season;

7. - 14. ...

15. any affected point source that is required to meet a more stringent state or federal NO<sub>x</sub> emission limitation, whether by regulation or permit. In this case, the monitoring, reporting, and recordkeeping requirements shall be in accordance with the more stringent regulation or permit and not this Chapter. If the applicable regulation or permit does not specify monitoring, reporting and recordkeeping requirements, the provisions of Subsections H and I of this Section shall apply;

16. - 17. ...

18. any affected point source firing fuel oil during a period of emergency and approved by the administrative authority;

19. - 20. ...

**D. Emission Factors**

1. The following tables list NO<sub>x</sub> emission factors that shall apply to affected point sources located at affected facilities in the Baton Rouge Nonattainment Area or the Region of Influence.

Table D-1A NO <sub>x</sub> Emission Factors for Sources in the Baton Rouge Nonattainment Area		
Category	Maximum Rated Capacity	NO <sub>x</sub> Emission Factor <sup>a</sup>
Electric Power Generating System Boilers:		
Coal-fired	>= 40 to <80 MMBtu/Hour	0.50 pound/MMBtu
	>= 80 MMBtu/Hour	0.21 pound/MMBtu
Number 6 Fuel Oil-fired	>= 40 to <80 MMBtu/Hour	0.30 pound/MMBtu
	>= 80 MMBtu/Hour	0.18 pound/MMBtu

Table D-1A NO <sub>x</sub> Emission Factors for Sources in the Baton Rouge Nonattainment Area		
Category	Maximum Rated Capacity	NO <sub>x</sub> Emission Factor <sup>a</sup>
All Others (gaseous or liquid)	>= 40 to <80 MMBtu/Hour	0.20 pound/MMBtu
	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Industrial Boilers:		
All Fuels	>= 40 to <80 MMBtu/Hour	0.20 pound/MMBtu
	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Process Heater/Furnaces:		
Ammonia Reformers	>= 40 to <80 MMBtu/Hour	0.30 pound/MMBtu
	>= 80 MMBtu/Hour	0.23 pound/MMBtu
All Others	>= 40 to <80 MMBtu/Hour	0.18 pound/MMBtu
	>= 80 MMBtu/Hour	0.08 pound/MMBtu
Stationary Gas Turbines:		
Peaking Service, Fuel Oil-fired	>= 5 to <10 MW	0.37 pound/MMBtu
	>= 10 MW	0.30 pound/MMBtu
Peaking Service, Gas-fired	>= 5 to <10 MW	0.27 pound/MMBtu
	>= 10 MW	0.20 pound/MMBtu
All Others	>= 5 to <10 MW	0.24 pound/MMBtu <sup>b</sup>
	>= 10 MW	0.16 pound/MMBtu <sup>c</sup>
Stationary Internal Combustion Engines:		
Lean-burn	>= 150 to <320 Hp	10 g/Hp-hour
	>= 320 Hp	4 g/Hp-hour
Rich-burn	>= 150 to <300 Hp	2 g/Hp-hour
	>= 300 Hp	2 g/Hp-hour

<sup>a</sup> based on the higher heating value of the fuel

<sup>b</sup> equivalent to 65 ppmv (15 percent O<sub>2</sub>, dry basis) with an F factor of 8710 dscf/MMBtu

<sup>c</sup> equivalent to 43 ppmv (15 percent O<sub>2</sub>, dry basis) with an F factor of 8710 dscf/MMBtu

Table D-1B NO <sub>x</sub> Emission Factors for Sources in the Region of Influence		
Category	Maximum Rated Capacity	NO <sub>x</sub> Emission Factor <sup>a</sup>
Electric Power Generating System Boilers:		
Coal-fired	>= 80 MMBtu/Hour	0.21 pound/MMBtu
Number 6 Fuel Oil-fired	>= 80 MMBtu/Hour	0.18 pound/MMBtu
All Others (gaseous or liquid)	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Industrial Boilers:		
All Fuels	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Process Heater/Furnaces:		
Ammonia Reformers	>= 80 MMBtu/Hour	0.23 pound/MMBtu
All Others	>= 80 MMBtu/Hour	0.08 pound/MMBtu
Stationary Gas Turbines:		
Peaking Service, Fuel Oil-fired	>= 10 MW	0.30 pound/MMBtu
Peaking Service, Gas-fired	>= 10 MW	0.20 pound/MMBtu
All Others	>= 10 MW	0.16 pound/MMBtu <sup>b</sup>
Stationary Internal Combustion Engines:		
Lean-burn	>= 1500 Hp	4 g/Hp-hour
Rich-burn	>= 300 Hp	2 g/Hp-hour

<sup>a</sup> all factors are based on the higher heating value of the fuel

<sup>b</sup> equivalent to 43 ppmv (15 percent O<sub>2</sub>, dry basis) with an F factor of 8710 dscf/MMBtu

2. - 8. ...

9. On a day that is designated as an Ozone Action Day by the department, a facility shall not fire an affected point source with Number 6 fuel oil or perform testing of emergency and training combustion units without prior

approval of the administrative authority. If a facility has received approval from the administrative authority for a plan to use Number 6 fuel oil, this is considered prior approval for purposes of this Paragraph.

E. - E.1.c.ii. ...

d. An owner or operator that chooses to use the provisions of Clause E.1.b.i or E.1.c.i of this Section to demonstrate compliance in an averaging plan shall include in the submitted plan a description of the actions that will be taken if any under-controlled unit is operated at more than 10 percent above its averaging capacity (HI<sub>i</sub> in Subparagraph E.1.a of this Section). Such actions may include a comparison of the total current emissions from all units in the averaging plan to the total emissions that would result if the units in the plan were operated in accordance with Subsection D of this Section, other reviews, reporting, and/or mitigation actions. If the department determines that the actions are not adequate to prevent an increase of emissions over the total emissions that would result if the units were operated in accordance with Subsection D of this Section, the department shall require that the averaging plan and/or the action plan be revised or shall disallow the use of the averaging plan.

e. ...

f. NO<sub>x</sub> reductions accomplished after 1997 through curtailments in capacity of a point source with a permit revision or by permanently shutting down the point source may be included in the averaging plan. In order to include a unit with curtailed capacity or that has been permanently shut down in the averaging plan, the old averaging capacity, determined from the average of the two ozone seasons prior to the capacity curtailment or shutdown, or such other two-year period as the department may approve, shall be used to calculate the unit's contribution to the term FL. The new averaging capacity, determined from the enforceable permit revision, shall be multiplied by the owner-assigned limit to calculate the contribution of the curtailed unit to the cumulative emission factor for the averaging group. For a shut down source, the contribution to the cumulative emission factor shall be zero.

g. NO<sub>x</sub> reductions from post 1997 modifications to exempted point sources, as defined in Subsection C of this Section, may be used in a facility-wide averaging plan. If a unit exempted in Subsection C of this Section is included in an averaging plan, the term R<sub>ij</sub> in Equation E-1 shall be established, in accordance with Subsection G of this Section, from a stack test or other determination of emissions approved by the department that was performed before the NO<sub>x</sub> reduction project was implemented, and the term R<sub>ai</sub> shall be established from the owner-assigned emission factor in accordance with Subparagraph E.1.a of this Section. For the case of a point source exempted by Paragraph C.15 of this Section, if the permit limits were established after 1997 and were not required by a state or federal regulation, the source may be included in an averaging plan, with the term R<sub>ij</sub> taken from Table D-1A or D-1B in Paragraph D.1 of this Section.

E.1.h. - G.4. ...

5. Compliance with the emission specifications of Subsection D or E of this Section for affected point sources operating without CEMS or PEMS shall be demonstrated while operating at the maximum rated capacity, or as near

thereto as practicable. The stack tests shall be performed according to emissions testing guidelines located on the department website under Air Quality Assessment/Emission Testing Program. Three minimum 1-hour tests, or three minimum 20-minute tests for turbines, shall be performed and the following methods from 40 CFR Part 60, Appendix A shall be used:

G.5.a. - H.1.b.v. ...

vi. alternatively to Clauses H.1.b.ii-iv of this Section, the owner or operator may request approval from the administrator for an alternative monitoring plan that uses a fuel-oxygen operating window to demonstrate continuous compliance of NO<sub>x</sub> and CO. In order to continuously demonstrate compliance with the NO<sub>x</sub> limits of Subsection D or E of this Section, the owner or operator shall implement procedures to operate the boiler on or inside the fuel and oxygen lines that define the operating window. The corners of the window shall be established during the initial compliance test required by Subsection G of this Section or similar testing at another time. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

2. - 2.b.v. ...

vi. alternatively to Clauses H.2.b.ii-iv of this Section, the owner or operator may request approval from the department for an alternative monitoring plan that uses a fuel-oxygen operating window, or other system, to demonstrate continuous compliance of NO<sub>x</sub> and CO. In order to continuously demonstrate compliance with the NO<sub>x</sub> limits of Subsection D or E of this Section, the owner or operator shall implement procedures to operate the process heater/furnace on or inside the fuel and oxygen lines that define the operating window. The corners of the window shall be established during the initial compliance test required by Subsection G of this Section or similar testing at another time. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

3. - 9.b. ...

10. All affected point sources that rely on periodic stack testing to demonstrate continuous compliance and use a catalyst to control NO<sub>x</sub> emissions shall be tested to show compliance with the emission factors of Subsection D or E of this Section after each occurrence of catalyst replacement. Portable analyzers shall be acceptable for this check. Documentation shall be maintained on-site, if practical, of the date, the person doing the test, and the test results. Documentation shall be made available for inspection upon request.

11. The owner or operator of any *low ozone season capacity factor boiler or process heater/furnace*, as defined in Subsection B of this Section, for which an exemption is granted shall install, calibrate, and maintain a totalizing fuel meter, with instrumentation approved by the department, and keep a record of the fuel input for each affected point source during each ozone season. If the average Btu-per-ozone

season-hour limit is exceeded, the owner or operator of any boiler or process heater/furnace covered under this exemption shall include the noncompliance in the written report that is due in accordance with Paragraph I.2 of this Section. If the average Btu-per-ozone season-hour limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after receipt of notification from the administrative authority of the loss of the exemption, the owner or operator shall submit a permit modification detailing how the facility will meet the applicable emission factor as soon as possible, but no later than 24 months, after exceeding the ozone season limit. Included with this permit modification, the owner or operator shall submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the department.

12. The owner or operator of any affected point source that is granted an exemption in accordance with Paragraph C.6 of this Section shall install, calibrate, and maintain a nonresettable, elapsed run-time meter to record the operating time in order to demonstrate compliance during the ozone season. If the average operating hours-per-day limit is exceeded the owner or operator shall include the noncompliance in the written report that is due in accordance with Paragraph I.2 of this Section. If the average operating hours-per-day limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after receipt of notification from the administrative authority of the loss of the exemption, the owner or operator shall submit a permit modification detailing how the facility will meet the applicable emission factor as soon as possible, but no later than 24 months, after exceeding the limit. Included with this permit modification, the owner or operator shall submit a schedule of increments of progress for the installation and operation of the required control equipment. This schedule shall be subject to the review and approval of the department.

13. Elapsed run-time and fuel meters, oxygen, diluents, and CO monitors, and other such instrumentation required by this Section shall be calibrated according to the manufacturer's recommendations, but not less frequently than once per year. Records shall be maintained according to Paragraph I.3 of this Section.

14. Any unit with a permit requirement or applicable regulation that requires more stringent testing than this Chapter requires shall comply with the permit requirements or applicable regulation rather than this Chapter.

15. Continuous demonstration of compliance with fuel, oxygen concentration, and other parameter limits shall be on a 30-day rolling average basis.

I. Notification, Recordkeeping, and Reporting Requirements

1. ...

2. The owner or operator of an affected point source granted an exemption in accordance with any part of Subsection C of this Section or required to demonstrate continuous compliance in accordance with Subsection H of this Section shall submit a written report within 90 days of the end of each ozone season to the administrative authority of any noncompliance of the applicable limitations of

Subsection D or E of this Section. The required information may be included in reports provided to the administrative authority to meet other requirements, so long as the report meets the deadlines and content requirements of this Paragraph. The report shall include the following information:

- a. a description of the noncompliance;
- b. a statement of the cause of the noncompliance;
- c. the anticipated time that the noncompliance is expected to continue or, if it has been corrected, the duration of the period of noncompliance; and
- d. the steps taken to prevent recurrence of the noncompliance.

I.3. - J.1. ...

2. The owner or operator shall complete all initial compliance testing, specified by Subsection G of this Section, for equipment modified with NO<sub>x</sub> reduction controls or a NO<sub>x</sub> monitoring system to meet the provisions of this Chapter within 60 days of achieving normal production rate or after the end of the shake down period, but in no event later than 180 days after initial start-up. Required testing to demonstrate the performance of existing, unmodified equipment shall be completed in a timely manner, but by no later than November 1, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:290 (February 2002), repromulgated LR 28:451 (March 2002), amended LR 28:1578 (July 2002), LR 30:748 (April 2004), LR 30:1170 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2441 (October 2005), LR 33:2088 (October 2007), LR 34:71 (January 2008), LR 36:60 (January 2010).

#### **§2202. Contingency Plan**

A. This Section shall become effective only in the event that the United States Environmental Protection Agency (EPA) determines and notifies the department in accordance with Section 175A(d) of the Clean Air Act as amended [42 USC 7511(b)(2)] that the Baton Rouge area has violated the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and that the department must put this contingency plan into effect.

B. Definition of *Ozone Season*. In the event of notification from EPA in accordance with Subsection A of this Section, the definition of *ozone season* in LAC 33:III.2201.B will be the period April 1 to October 31, inclusive, of each year.

C. Effective Dates. An owner or operator of a source subject to this Chapter shall comply with this Section as expeditiously as possible, but not later than the first day of the next ozone season after determination and notification by the EPA in accordance with Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:1170 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 36:63 (January 2010).

Herman Robinson, CPM  
Executive Counsel

1001#017

## **RULE**

### **Department of Health and Hospitals Board of Dentistry**

General Provisions  
(LAC 46:XXXIII.116 and 1713)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.116 and 1713. No preamble has been prepared.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XXXIII. Dental Health Profession**

#### **Chapter 1. General Provisions**

#### **§116. Reconsideration of Adverse Sanctions**

A. - H. ...

I. A licensee may request a reconsideration of adverse sanctions a maximum of three times for the same disciplinary matter. Any applications beyond this limit will be considered at the discretion of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1113 (June 1998), amended LR 26:1612 (August 2000), repromulgated LR 27:1890 (November 2001), amended LR 27:1893 (November 2001), LR 36:63 (January 2010).

#### **Chapter 17. Licensure Examinations**

#### **§1713. Board Approved Regional or National**

#### **Independent Third Party Clinical Examinations**

A. The board shall accept passing scores from board approved testing agencies which administer reliable, accurate, and valid examinations and in which the board has the option of representation on both the board of directors and the examination review committee or equivalent committees and allow for the board's input into the examination development and administration.

B.1. The clinical examination shall be substantially equivalent to the clinical licensure examination most recently administered by the board and include procedures performed on human subjects as part of the assessment of restorative and periodontal clinical competencies and shall have included evaluations in at least four of the following subject matter areas:

- a. periodontics, clinical abilities testing;
- b. endodontics, clinical abilities testing;
- c. amalgam preparation and restoration;
- d. anterior composite preparation and restoration;
- e. posterior ceramic or composite preparation and restoration;
- f. cast gold, clinical abilities testing;
- g. prosthetics, written or clinical abilities testing;
- h. oral diagnosis, written or clinical abilities testing;

or

- i. oral surgery, written or clinical abilities testing.
- 2. In addition to the foregoing requirements, the examination shall include:
  - a. anonymity between candidates and examination raters;
  - b. standardization and calibration of raters; and
  - c. a mechanism for post examination analysis.
- 3. The board shall accept scores upon such examination for a period of three years following the date of such examinations. Each applicant shall arrange for and ensure the submission to the board office the applicant's scores.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 36:63 (January 2010).

C. Barry Ogden  
Executive Director

1001#043

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Registered Nurses—Peripherally Inserted Central Catheter (PICC) Insertion (LAC 46:XLVII.3707)**

The Louisiana State Board of Nursing has added LAC 46:XLVII.3707, in accordance with R.S. 37:918 and in accordance with the provisions of the Administrative Act, R.S. 49:950 et seq.

The rule, LAC 46:XLVII.3707, defines peripherally inserted central catheter (PICC) lines and provides that registered nurses may insert, secure and remove PICC lines provided certain conditions, including specified training are satisfied. The rule provides that catheter tip placement must be verified by a physician prior to the initiation of therapy.

**Title 46**

**PROFESSIONAL STANDARDS AND  
OCCUPATIONAL STANDARDS**

**Part XLVII. Nurses: Practical Nurses and Registered Nurses**

**Subpart 2. Registered Nurses**

**Chapter 37. Nursing Practice**

**§3707. Peripherally Inserted Central Catheter (PICC)**

**Insertion and Removal**

**A. Definition**

*PICC Line*—peripherally inserted central catheters (PICCs) are venous devices used to administer all types of intravenous medications and solutions. PICCs are soft, flexible catheters.

B. Registered nurses may insert, secure and remove central catheters through peripheral venous sites provided that the following conditions are met:

- 1. documentation of satisfactory completion of a minimum of four hours of study in an appropriate

instructional program and verification of employment in a supervised clinical practice on file with the employer;

- 2. catheter placement is pursuant to a physician or other qualified prescriber's order for the procedure;

- 3. the procedure is performed according to appropriately established policy and procedure of the health care facility, employing agency and/or physician's office;

- 4. in view of the proliferation of various catheter products available for placement, the registered nurse must be knowledgeable about the manufacturer's suggestions and precautions concerning the specific catheter product utilized, and should review product information on a frequent basis; and

- 5. catheter tip placement must be determined by a physician prior to initiation of therapy.

C. In order for a registered nurse to be authorized by the board under this Section, the instructional program shall include the following courses of study:

- 1. for nurses performing duties to include insertion of PICC lines:

- a. anatomy and physiology of circulation and fluid balance;

- b. indications and contradictions for PICC placement;

- c. complications and management techniques to include potential adverse reactions;

- d. techniques for placement of PICC lines may include ultrasound techniques;

- e. techniques for placement of PICC line placement and removal; and

- f. nursing responsibilities;

- 2. for nurses performing duties that would include management and monitoring of PICC lines:

- a. anatomy and physiology of circulation and fluid balance;

- b. indications and contraindications for PICC placement;

- c. complications and management techniques to include potential adverse reactions; and

- d. nursing responsibilities;

- 3. for nursing performing the duties of PICC line removal:

- a. techniques for PICC line removal;

- b. complications and management techniques to include potential adverse reactions; and

- c. nursing responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 36:64 (January 2010).

Barbara L. Morvant, MN, RN  
Executive Director

1001#015

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Disproportionate Share Hospital Payments  
Pre-Admission Certification and Length of Stay Assignment  
(LAC 50.V.2501)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.2501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

**TITLE 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Medical Assistance Program—Hospital Services**

**Subpart 3. Disproportionate Share Hospital Payments**

**Chapter 25. Disproportionate Share Hospital Payment Methodologies**

**§2501. General Provisions**

A. - C. ...

D. The uncompensated care costs associated with Medicaid days that do not meet the established criteria for pre-admission certification and length of stay assignment are not allowable for disproportionate share payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:65 (January 2010).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Alan Levine  
Secretary

1001#031

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing  
and**

**Office for Citizens with Developmental Disabilities**

Home and Community Based Services Waivers—New  
Opportunities Waiver Resource Allocation Model  
(LAC 50:XXI.13704)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities has adopted LAC 50:XXI.13704 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community Based Services  
Waivers**

**Subpart 11. New Opportunities Waiver**

**Chapter 137. General Provisions**

**§13704. Resource Allocation Model**

A. Effective February 1, 2009, uniform needs-based assessments and a resource allocation model will be implemented in the service planning process for the Medicaid recipients participating in the New Opportunities Waiver.

1. The uniform needs-based assessments shall be utilized to determine the level of support needs of individuals with developmental disabilities.

2. The purpose of the resource allocation model is to assign service units based on the findings of the assessments.

3. Within the resource allocation model, there is a determination of an acuity level for individual and family support (IFS) services.

a. The recipient or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the amount of assigned IFS service units. If the recipient disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

4. Implementation of the resource allocation model will be phased-in for the allocation of new waiver opportunities and renewal of existing waiver opportunities beginning July 1, 2009.

B. The following needs-based assessment instruments shall be utilized to determine the level of support needs of NOW recipients:

- 1. the Supports Intensity Scale (SIS); and
- 2. Louisiana Plus (LA Plus).

C. The Supports Intensity Scale is a standardized assessment tool designed to evaluate the practical support requirements of individuals with developmental disabilities in 85 daily living, medical and behavioral areas.

1. SIS measures support needs in the areas of:

- a. home living;
- b. community living;
- c. lifelong learning;
- d. employment;
- e. health and safety;
- f. social activities; and
- g. protection and advocacy.

2. SIS then ranks each activity according to frequency, amount and type of support. A supports intensity level is determined based on a compilation of scores in general supports, medical supports and behavior supports.

D. Louisiana (LA) Plus is a locally developed assessment tool designed to identify support needs and related information not addressed by SIS. LA Plus serves as a complement to SIS in the support planning process. LA Plus is used to evaluate the individual's support needs based on information and data obtained from four areas of the person's life.

1. Support needs scale measurements including:

- a. material supports;
- b. vision related supports;

- c. hearing related supports;
  - d. supports for communicating needs;
  - e. positive behavior supports;
  - f. physicians supports;
  - g. professional supports (e.g., registered nurse, physical therapist, occupational therapist, etc.); and
  - h. stress and risk factors.
2. Living arrangements and program participation including:
- a. people living in the home;
  - b. natural supports in the home;
  - c. living environments; and
  - d. supports and service providers.
3. Medical and diagnostic information findings including:
- a. diagnoses;
  - b. medications and dosages; and
  - c. need for relief from pain or illness.
4. Personal satisfaction reports including:
- a. agency supports provided at home;
  - b. work or day programs;
  - c. living environment;
  - d. family relationships; and
  - e. social relationships.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing and the Office for Citizens with Developmental Disabilities, LR 36:65 (January 2010).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Alan Levine  
Secretary

1001#032

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services  
Pre-Admission Certification  
(LAC 50:V.301)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:V.301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 1. Inpatient Hospitals

#### Chapter 3. Pre-Admission Certification

#### §301. General Provisions

A. Pre-admission certification, concurrent review and length of stay assignment shall be required for all admissions

to non-state and state operated acute care general hospitals. Current InterQual<sup>®</sup> criteria, Thomson Reuters or Solucient data and Health Care Industries Association (HCIA) data shall be utilized by the fiscal intermediary to determine medical necessity and authorize admission, for initial length of stay (LOS) and continued stay assignment, and concurrent review.

1. Medical necessity for inpatient admission, concurrent review and length of stay assignment for acute care general hospitals will be determined by utilizing age-based guidelines for severity of illness and intensity of service as well as guidelines for surgery and procedures in the inpatient setting.

2. National and regional specific data elements such as age, multiple diagnoses and/or surgeries will also be utilized for initial length of stay and continued stay assignment.

B. Hospitals shall use current and updated InterQual<sup>®</sup> criteria and Thomson Reuter or Solucient data to determine appropriateness of admission and continued stays.

1. Providers must have the capability to submit requests and receive responses through a web-based system.

C. Registration and length of stay assignment are required for all admissions to rehabilitation hospitals.

1. The hospital is required to register each Medicaid admission no later than one business day after the date of admission.

2. Length of stay assignment for rehabilitation hospital admissions is determined by the fiscal intermediary staff using updated InterQual<sup>®</sup>, HCIA LOS Southern Region grand totals, and customized criteria as well as clinical information for the patient provided by the hospital.

3. The initial length of stay assigned for each rehabilitation hospital admission is 14 days based on the lowest average length of stay from the American Hospital Association Average Stay Study for rehabilitation conditions.

D. Pre-admission certification and length of stay assignment are required for all admissions for inpatient psychiatric services (free-standing psychiatric hospitals and distinct part psychiatric units in acute care general hospitals).

1. The pre-admission certification criteria for psychiatric admissions are formulated according to categories for adults and children and utilize the current revision of the *Diagnostic and Statistical Manual of Mental Disorders*.

2. The initial length of stay assigned for all admissions to free-standing psychiatric hospitals and distinct part psychiatric units is at the fiftieth percentile based on the admitting diagnosis.

E. Pre-admission certification and length of stay assignment are required for all admissions to long term hospitals.

1. Admissions to long-term hospitals for acute care, psychiatric care, or rehabilitation will be assigned lengths of stay using the same criteria that is utilized for admissions to those respective hospital settings for these patients.

2. All other long-term hospital admissions will be assigned an initial length of stay of 14 days.

F. Extensions of the initial length of stay may be requested by the hospital when appropriate care of the recipient indicates the need for hospitalization in excess of the originally approved assignment.

1. An extension must be requested no later than the expected day of discharge. If the expected day of discharge is on a weekend or holiday, the extension must be requested by the next business day. Extensions are granted on a case-by-case basis and shall be based on clinical information provided by the hospital.

2. The initial approved extension is assigned up to the 75th percentile for acute care and up to the 75th percentile for inpatient psychiatric services, regardless of the hospital setting.

a. Subsequent approved extensions may be submitted for consideration of up to three additional days.

3. Initial approved extensions for acute care, psychiatric care and rehabilitation admissions to long term hospitals are assigned using the same criteria as that used in the other applicable hospital settings for these patients.

a. All other long term hospital initial approved extensions may be assigned up to 14 days.

b. Subsequent extension requests for long-term hospital admissions (other than admissions for acute care, psychiatric care or rehabilitation) may be assigned up to seven days.

4. Subsequent approved extension requests for rehabilitation cases may be assigned up to seven days.

5. There is no limit on the number of extensions that can be requested by a hospital.

G. The pre-admission certification requirement applies to acute care general hospitals (non-state and state operated), long term hospitals, free-standing psychiatric hospitals and distinct part psychiatric units in acute care general hospitals.

1. Pre-admission certifications must be obtained prior to admission or on a concurrent basis, with provision for retrospective review only in exceptional circumstances. Medicaid reimbursement will not be authorized without completion of the pre-admission certification requirement.

a. Pre-admission certification for all emergency admissions to long term hospitals, free-standing psychiatric hospitals and distinct-part psychiatric units must be requested upon admission.

H. The pre-admission certification reviews are conducted by registered nurses (or licensed mental health professionals for psychiatric cases) in consultation with a physician. If the request for admission is denied, the hospital may request a reconsideration of the decision.

1. The reconsideration process involves a physician to physician consultation between the treating physician or his/her designee and the fiscal intermediary's physician consultant within one business day of receipt of the denial notification.

2. If the reconsideration process results in a denial of the admission, the hospital may appeal the decision by submitting a formal request for an appeal in writing to the Bureau of Appeals in accordance with the department's established appeal procedures.

I. Inpatient admissions for dually eligible Medicare/Medicaid beneficiaries are not subject to pre-admission certification and length of stay assignment when Medicare Part A benefits are still in effect.

J. A hospital may request a retrospective review for Medicaid reimbursement of inpatient hospital services in only two situations: retroactive eligibility; and depletion of a dually eligible recipient's Medicare Part A benefits.

1. In the case of retroactive eligibility, hospitals have up to one year from the date that the recipient was added to the eligibility file to request a retrospective review.

2. In the case where Medicare Part A benefits have been exhausted, hospitals must request a retrospective review within 60 days from the date of the Medicare Explanation of Benefits that verifies that Medicare Part A benefits have been exhausted.

3. The two-year timely filing requirement for filing claims is applicable for retrospective reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:66 (January 2010).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Alan Levine  
Secretary

1001#033

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services  
Radiology Utilization Management  
(LAC 50:V.6105)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:V.6105 under the Medical Assistance Program as authorized by 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospitals

#### Subpart 5. Outpatient Hospitals

#### Chapter 61. Other Outpatient Hospital Services

#### Subchapter A. General Provisions

#### §6105. Radiology Utilization Management

A. Radiology utilization management establishes provisions requiring prior authorization for certain outpatient high-tech imaging.

B. Prior authorization (PA) is based on best evidence medical practices as developed and evaluated by board-certified physician reviewers, including board-certified radiologists and additional physical specialists who will assist in the claim evaluation process.

1. Services requiring PA will be noted on the Medicaid fee schedule and shall include, but are not limited to, the following radiology service groups:

- a. magnetic resonance (MR);
- b. positron emission tomography (PET);
- c. computerized tomography (CT); and
- d. nuclear cardiology.

C. Reimbursement for these services is contingent upon prior authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:67 (January 2010).

Implementation of the provisions of this Rule is contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Alan Levine  
Secretary

1001#034

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program  
Inpatient Physician Services  
(LAC 50.IX.501)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed the December 20, 1985 Rule governing the reimbursement methodology for designated surgical procedures performed in an ambulatory setting and has adopted LAC 50:V.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part IX. Professional Services Program

##### Subpart 1. General Provisions

#### Chapter 5. Inpatient Physician Services

##### §501. Inpatient Physician Services

A. Reimbursement for inpatient physician services rendered in all hospitals is subject to hospital pre-admission certification and length of stay assignment.

B. InterQual® Guidelines for Surgery and Procedures will be utilized for pre-admission certification, length of stay assignment and concurrent care review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:68 (January 2010).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Alan Levine  
Secretary

1001#035

## RULE

### Department of Health and Hospitals Office of Public Health

Water Supplies—Fluoridation  
(LAC 48:V.1101, 1303-1315 and LAC 51:XII.317)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority granted under R.S. 40:5.11(G), amends the Louisiana Administrative Code (LAC), Title 48 (Public Health—General), Part V (Preventive Health Services), Subpart 5 (Fluoridation) regulations. In addition, the state health officer acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4(A)(6) and R.S. 40:5, amends LAC, Title 51 (Public Health—Sanitary Code), Part XII (Water Supplies).

The Title 48 fluoridation Rule changes are designed to implement Act 761 of the 2008 Regular Session. This legislation enacted a mandate that public water systems with over 5,000 service connections are required to fluoridate its water supply unless when the natural fluoride level is outside the optimal fluoride level/range; allows certain exemptions to the fluoride requirement to apply; establishes an optimal fluoride level/range; and updates system requirements, monitoring and compliance guidelines, record keeping and reporting, and fund allocation.

Part XII (Water Supplies) of LAC 51 (the State Sanitary Code) generally is the major Part of the LAC which regulates potable water supply systems from a public health standpoint, including public water systems. A Section that had been reserved in Part XII is used to make reference to the need for compliance with LAC 48:V.Subpart 5 when a water system fluoridates its water supply.

All fluoride-associated appendices to LAC 48:V.Subpart 5 published in Volume 2 of Title 48 of the April 1987 LAC are hereby repealed in their entirety.

#### Title 48

### PUBLIC HEALTH—GENERAL

#### Part V. Preventive Health Services

##### Subpart 5. Fluoridation

#### Chapter 11. General Provisions

##### §1101. Definitions

A. Words not defined in this Subpart shall have their common usage and meaning as stated in the *Merriam-Webster's Collegiate Dictionary-Tenth Edition* and other similarly accepted reference texts.

B. Unless otherwise specifically provided herein, the following words and terms are defined as follows.

*Caries*—tooth decay, also commonly known as cavities.

*Community Water Fluoridation*—the adjustment of fluoride deficient water in community water supplies to the optimal fluoride level/range for a specified geographic area.

*Community Water Supply*—a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

*Fluoride Deficient Water*—any water supply system which provides potable water having a natural fluoride content below the optimal fluoride level/range for a specified geographic area.

*Fluoride Source Material*—the approved fluoride-containing product which is to be used to adjust the potable water supply to the optimal fluoride level/range.

*Ground Water*—subsurface water occupying the saturation zone from which wells and springs are fed. In a strict sense the term applies only to water below the water table.

*Monitoring*—the analysis and recording of the fluoride ion content of water in a community water supply on a regular basis.

*Optimal Fluoride Level/Range*—that level of fluoride which has been deemed to be most beneficial to health as set forth by the Centers for Disease Control and Prevention (CDC) for community water supplies. For community water supplies in the state of Louisiana, the optimal fluoride level is 0.8 mg/L; however, the acceptable range is from 0.7 to 1.2 mg/L.

*Permit*—a written document issued by the state health officer through the Office of Public Health which authorizes construction and operation of a new potable water supply or a modification of any existing supply.

*Person*—any natural person, individual, partnership, corporation, association, governmental subdivision, receiver, tutor, curator, executor, administrator, fiduciary, or representative of another person, or public or private organization of any character.

*Potable Water*—water having bacteriological, physical, radiological, and chemical qualities that make it safe and suitable for human drinking, cooking and washing uses.

*Potable Water Supply*—a source of potable water, and the appurtenances that make it available for use.

*Public Water Supply*—public water system.

*Public Water System*—a system for the provision to the public of water for potable water purposes through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:

a. any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and

b. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

*Sample Points*—locations in a community water supply's distribution system where water samples are taken for fluoride analysis. These sample points of finished water shall be taken at the consumer's taps throughout the distribution system where the water will be representative of the whole community water system.

*Service Connection*—the pipe from the water main and/or water meter, potable water supply system or other source of potable water supply to the building or structure served.

*Source Water*—any water well, spring, cistern, infiltration gallery, stream, reservoir, pond, or lake from

which, by any means, water is taken either temporarily or continuously for potable use.

*Sub-Optimal Fluoride Level*—any adjusted fluoride level that is below the optimal fluoride level/range for a specific geographic area.

*Surface Water*—derived from water sources on the surface of the earth such as streams, ponds, lakes, or reservoirs.

*Surveillance*—the necessary steps to assure that the fluoride content in water over a period of time is in compliance with the optimal fluoride level/range in a community water supply for a specific geographic area.

*Water Supplier*—a person who owns or operates a water supply system including, but not limited to, a person who owns or operates a public water system.

*Water Supply System*—the system of pipes or other constructed conveyances, structures and facilities through which water is obtained, treated to make it potable (if necessary) and then distributed (with or without charge) for human drinking, cooking, washing or other use.

*Water Well (Well)*—an artificial excavation that derives water from the interstices of the rocks or soil which it penetrates.

**AUTHORITY NOTE:** Promulgated in accordance with P.L. 97-35, Section 901; 45 CFR Parts 16, 74, and 96; 42 USC 2476; and R.S. 40:5.11(G).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 36:68 (January 2010).

## **Chapter 13. Statewide Fluoridation Program**

### **§1303. Background and Purpose**

A. The fluoridation of community water supplies is the most effective mechanism for preventing dental caries. It is the only means whereby people of all ages in an area can be reached from birth and at a low cost. This has added significance for the many people who are dentally indigent.

B. The benefits of community fluoridation in maintaining dental health are substantial.

1. Persons drinking water which contains fluoride within the optimal fluoride level/range have teeth which are more caries resistant.

2. The caries rate among children drinking water which contains fluoride within the optimal fluoride level/range can be as much as two-thirds less than among children drinking fluoride deficient water.

3. By the time that children reach their teens, about six times as many residing in communities which have their community water supply meet the optimal fluoride level/range are completely free of caries as their counterparts in fluoride deficient areas.

4. When the optimal fluoride level/range in a community water system is maintained, extractions of permanent teeth caused by premature loss of primary teeth can be prevented. In addition, crooked and overlapping permanent teeth caused by premature loss of primary teeth can be prevented.

5. Adults consuming water which contains fluoride within the optimal fluoride level/range throughout life can expect fewer tooth extractions due to caries and are less likely to become edentulous (lose all their natural teeth) in later years.

C. Community fluoridation of drinking water produces economies in children's dental care in terms of both cost and treatment time. The cost benefit ratio has been estimated to be 1:38. Children receiving the benefits of fluoridation in their drinking water require fewer dental treatment services and the treatment that is required is less complex and, therefore, less costly and less time consuming to provide. The costs of children's dental care in fluoridated areas can be less than one-half the cost in fluoride deficient areas.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 16, 76 and 96; P.L. 97-35, Section 901; 42 USC 2476, and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 36:70 (January 2010).

### **§1305. Requirements for Fluoridation of a Public Water System**

A. LAC 51:XII.105 of the Louisiana State Sanitary Code requires approval by the state health officer or his/her duly authorized representative for certain types of changes made in the treatment of water offered the public. The addition of the fluoride ion to water is covered by that regulation.

B. For any public water system desiring to fluoridate its water, a formal request shall be made to the state health officer for approval to install the necessary fluoridation equipment.

C. In accord with R.S. 40:5.11(B), each community water supply having at least 5,000 service connections and natural fluoride levels that are outside the optimal fluoride level/range as defined in §1101.B of this Subpart shall acquire, install, operate, and maintain a fluoridation system in order to maintain the optimal fluoride level/range in the water being produced and distributed.

NOTE: Exemptions. Any community water supply to which Subsection C of this Section applies shall be exempt from the requirements of Subsection C of this Section when either of the following is applicable.

1. The Department of Health and Hospitals (DHH) is unable to identify a source of sufficient funds available to the community water supply to cover the capital costs, any associated costs to cover the installation, and the funds necessary to cover the cost of purchasing sufficient fluoride source material required to properly fluoridate the system for a period of six months from the date of initial installation and operation; or,

2. A community water supply has never used fluoridation to adjust fluoride levels in its water and its finished water contains fluoride in amounts outside of the optimal fluoride level/range as defined in §1101.B of this Subpart, and a local election on such exemption has been called and held in accordance with R.S. 40:5.11(B), and a majority of the registered voters who cast a vote in said election approve such exemption.

D. Any community water system with less than 5,000 service connections that submits a formal request per Subsection B of this Section must enclose with that request a copy of the ordinance or resolution directing the fluoridation of the water system duly passed by the appropriate governing body.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR, Parts 16, 74, and 96; P.L. 97-35; 42 USC 2476; and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 36:70 (January 2010).

### **§1307. System Requirements**

A. Detailed plans and specifications for which a fluoridation permit is requested shall be submitted in duplicate, to the Department of Health and Hospitals – Office of Public Health's (DHH-OPH) District engineer and the DHH-OPH's fluoridation engineer by the responsible person of the water supply system. Such plans and specifications shall be submitted prior to construction.

B. The following provides minimum requirements as well as additional information to assist in the application for a fluoridation permit and in the preparation of plans and specifications. The review and approval of plans and specifications submitted for the issuance of a permit, shall be made in accordance with the "Recommended Standards for Water Works, 2003 Edition" (aka the "Ten State Standards") plus any additional requirements as set forth in this Subpart. Additional fluoride-related documents which may be used by a community water system as guidance/information purposes may be found in the CDC's Morbidity and Mortality Weekly Report (MMWR) titled "Engineering and Administrative Recommendations for Water Fluoridation, 1995", as amended, and in the American Water Works Association (AWWA) "Water Fluoridation Principles and Practices M4, Fifth Edition", as amended.

1. Three general types of fluoride compounds are approved for fluoridation of water supplies; namely, sodium fluoride, sodium fluorosilicate and fluorosilicic acid. Each has certain advantages and disadvantages, and the type chosen will depend on the characteristics of the water to be treated and the capacity of the supply.

2. The fluoride source material to be used must conform to NSF International/American National Standards Institute (NSF/ANSI) Standard 60-2009 and the applicable AWWA specification, as follows:

- a. for sodium fluoride, AWWA Standard B701-99;
- b. for sodium fluorosilicate, AWWA Standard B702-99; or
- c. for fluorosilicic acid, AWWA Standard B703-00.

3. The fluoridation system shall only operate when a flow of water is detected. If the water supply system serves less than two hundred service connections, a secondary flow-based control device shall be provided as back-up protection.

4. A means of measuring the total amount of water treated daily and the amount of chemical injected within the same time period must be provided. These measurements must be accurate to within 5.0 percent.

5. Fluorosilicic acid shall be stored in the original containers or containers provided for the specific purpose, apart from the other chemicals used in the water treatment process. Bulk storage tanks shall be in secondary containment per LAC 33:IX.Chapter 9.

6. When bulk storage of fluorosilicic acid is provided, a day tank shall be provided. The day tank shall hold no more than a 30 hour supply, as calculated at maximum feed rate. The day tank should be scale mounted, preferably under shelter. If scales are not used, level indication can be used

for the calculation of the amount of chemical used provided it is accurate within five percent. Filling of day tanks shall not be automated.

7. A diaphragm-type anti-siphon device shall be installed in the fluoride feed line when a metering pump is used and shall be located at the fluoride injection point. A second diaphragm-type anti-siphon device should be installed immediately downstream of the metering pump's discharge head. These anti-siphon devices shall have a diaphragm that is spring-loaded in the closed position.

8. The following safety equipment shall be required for operators handling the following fluoride compounds:

a. fluorosilicic acid: gauntlet neoprene gloves, a minimum of 12 inches long with cuffs; full face shield and splash-proof safety goggles; and a heavy-duty, acid-proof neoprene apron;

b. sodium fluoride or sodium fluorosilicate: the same safety equipment required under Subparagraph 8.a. of this Subsection for fluorosilicic acid with the exception that the full face shield shall be replaced by a National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA) approved, N-series respirator;

c. for dry chemical systems, an eye wash station should be available and easily accessible; and

d. for acid systems, an eye wash station shall be available along with a safety shower and both shall be easily accessible and connected to an approved potable water supply.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR, Parts 16, 74 and 96; P.L. 97-35, Section 901; 42 USC 2476; and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 36:70 (January 2010).

### **§1309. Monitoring and Compliance—Optimum**

#### **Fluoride Levels**

A. If a water supply system has a single fluoridation system which treats all the water distributed to system consumers, the supplier shall collect a daily water sample for fluoride analysis either in the distribution system or at the entry point. If a water supply system does not fluoridate all its water and/or has more than one fluoridation system, the supplier shall collect a minimum of one water sample daily in the distribution system and shall rotate the sample site daily in order to obtain representative results of the level of fluoride in the water provided throughout the distribution system. If the water supply system is such that a single daily sample taken in different locations cannot provide a representative level, then multiple samples may be required. The number, location, and frequency of samples shall be in accordance with a monitoring plan developed by the water supply system and approved by the DHH-OPH.

1. If more than 20 percent of the daily fluoride samples collected in a month by a water supply system fall outside the optimal fluoride level/range, the system shall be out of compliance with the optimal fluoride level/range.

2. At least once a month, any water supplier with an operating fluoridation system shall divide one sample and have one portion analyzed for fluoride in a "DHH-OPH Approved Chemical Laboratory/ Drinking Water" lab

(normally, on-site of the water treatment plant – see LAC 51:XII.Chapter 15) and the other portion analyzed for fluoride in a "DHH-OPH Certified Laboratory for Drinking Water Analyses – Chemistry". (A list of such "DHH-OPH Certified Laboratory for Drinking Water Analyses – Chemistry" may be found on the DHH-OPH website at the following url address: "<http://www.dhh.louisiana.gov/offices/?ID=204>".)

3. Any water supply system with an operating fluoridation system shall sample the raw source water(s) annually and analyze for fluoride.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:71 (January 2010).

### **§1311. Recordkeeping and Reporting**

A. By the tenth day of each month following the month being reported, each water supplier fluoridating its potable water supply shall send operational reports to the DHH-OPH's District Engineer and the DHH-OPH fluoridation engineer which shall include the following:

1. The fluoride source material used and the calculated fluoride dose in mg/L based on the latest annual raw source water(s) fluoride level.

2. Information on any interruptions in the fluoridation treatment which may have occurred during the month including the duration of the interruptions, an explanation of the cause(s), and what corrective actions were taken to insure that fluoridation treatment was resumed in a timely manner;

3. The results of the daily monitoring for fluoride in the water distribution system reported in terms of daily result, ranges, and the number of samples collected; and,

4. The results of monthly split sample(s) analyzed per §1309.A.2 of this Chapter.

B. If a fluoride overfeed exceeding 10.0 mg/L occurs, the water supply system shall notify the DHH-OPH by the end of the business day of the occurrence or, if the overfeed occurs on a weekend, state holiday, or other times of state office closure, the water supply system shall notify the DHH-OPH via e-mail communication to: [safe.water@la.gov](mailto:safe.water@la.gov).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:71 (January 2010).

### **§1313. Funds Allocation**

A. DHH-OPH shall prioritize water supply systems with 5,000 or more service connections that are not fluoridating to optimum fluoride levels for the receipt of funds as they become available. Priority will be based on cost effectiveness as well the level of funds available. The priority list will be periodically reviewed.

B. DHH-OPH shall also consider requests for funds from water supply systems with less than 5,000 service connections. Fund allocation will be based on cost effectiveness.

C. Within 90 days of written notification from DHH-OPH to the community water system of the availability of funds, the community water system shall submit an estimate of the cost to acquire and install the needed fluoridation equipment as well as an estimate of the cost of fluoride

source material required to fluoridate the system for a period of six months from the date of initial installation and operation.

D. Upon acceptance of the submitted cost estimate by DHH-OPH, a written agreement between the State of Louisiana's DHH-OPH and the governing body of the community water system shall be executed for the commissioning, construction, and the first six months of fluoride source materials for the required fluoridation system. Transfer of funds shall be through reimbursement to the water supply system for paid invoices as they are submitted to the DHH-OPH.

E. All design, procurement, and construction shall be completed in a timely manner consistent with the reimbursement of funds by the DHH-OPH. Upon completion of construction and the receipt of the initial six months supply of fluoride source material, as well as the completion of appropriate operator training and certification, the water supply system shall promptly initiate water fluoridation and shall maintain the optimum fluoride level/range throughout its distribution system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:71 (January 2010).

#### **§1315. Requirement for Continued Operation**

A. Any public water system with over 5,000 service connections that has initiated fluoridation prior to, on, or after July 6, 2008 shall not discontinue fluoridation without the approval of a majority of the registered voters who cast a vote in a local election called and held in accordance with R.S. 40:5.11(B).

B. Any public water system with fewer than 5,000 service connections that has initiated fluoridation as directed by ordinance or resolution of the appropriate governing body shall not discontinue fluoridation without the approval of that governing body.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:72 (January 2010).

### **Title 51**

## **PUBLIC HEALTH—SANITARY CODE**

### **Part XII. Water Supplies**

#### **Chapter 3. Water Quality Standards**

#### **§317. Water Systems Which Fluoridate/Plan to Fluoridate**

A. Public water systems which fluoridate their water supply (or which plan to fluoridate their water supply) shall comply with the applicable requirements of LAC 48:V.Subpart 5 (Fluoridation).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8), R.S. 40:5 (2)(3)(5)(6)(7)(17), and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:72 (January 2010).

Alan Levine  
Secretary

1001#044

## **RULE**

### **Department of Public Safety and Corrections Board of Private Security Examiners**

#### **Training (LAC 46:LIX.409)**

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Board of Private Security Examiners amends Section 409 under Chapter 4 to change the length of time an instructor license is valid, from two years to one year. An administrative processing fee is being assessed at a cost of \$10 to cover administrative costs or processing instructor renewal applications.

The Rule requires a renewal application of instructors to be submitted and reviewed annually, rather than every two years.

### **Title 46**

## **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

### **Part LIX. Private Security Examiners**

#### **Chapter 4. Training**

#### **§409. Instructor Requirements, Responsibilities and Liability**

A. - C.2. ...

D. License Renewal

1. Instructor licenses issued by the board shall be valid for one year. Expiration date is based on the date the license is approved and issued.

D.2. - G.2. ...

H. An administrative fee of \$10 made payable to the board will be assessed on all fees that may be assessed by the board under this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:755 (December 1987), amended LR 18:194 (February 1992), LR 23:589 (May 1997), LR 26:1074 (May 2000), LR 31:1600 (July 2005), LR 36:72 (January 2010).

Wayne Rogillio  
Executive Director

1001#046

## **RULE**

### **Department of Revenue Policy Services Division**

#### **Individual Income Tax Filing Extensions (LAC 61:III.2501)**

Under the authority of R.S. 47:1511, 1514, 103(D), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, amends Subparagraph A.2.b of LAC 61:III.2501 to strike the language "extension via the Department of Revenue's web site."

This language was originally included because the only electronic application for requesting an extension was via the LDR web site. Beginning this year, LDR will require software developers to provide the capability for taxpayers/tax preparers to request extensions electronically.

**Title 61**

**REVENUE AND TAXATION**

**Part III. Department of Revenue—Administrative Provisions and Miscellaneous**

**Chapter 25. Returns**

**§2501. Individual Income Tax Filing Extensions**

A. The secretary may grant a reasonable extension of time to file a state individual income tax return, not to exceed six months.

1. To obtain a filing extension, the taxpayer must make the request on or before the tax return's due date.

2. A taxpayer may request a state filing extension by submitting:

a. a paper copy of an Application for Extension of Time to File Louisiana Individual Income Tax;

b. an electronic application; or

c. a paper copy of the IRS Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.

B. Filing Extension Does Not Extend Time to Pay Tax

1. A filing extension granted by the secretary only allows for an extension of time to file the tax return. The extension does not allow an extension of time to pay the tax due.

2. To avoid interest and penalty assessments, estimated taxes due should be paid on or before the original due date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1514, and 103(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:1137 (June 2009), amended LR 36:73 (January 2010).

Cynthia Bridges  
Secretary

1001#073

**RULE**

**Department of Social Services  
Office of Community Services**

**Foster Care (LAC 67:V.3501)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and to comply with Act 392 of the 2008 Regular Legislative Session, the Department of Social Services, Office of Community Services, has amended LAC 67: V., Subpart 5, Chapter 35, §3501, "Payables, Reimbursables, and Expenditures."

Act 392 of the 2008 Regular Legislative Session requires in part that Children's Code Article 685 and R.S. 46:3 51.1(A) be amended and reenacted and that Children's Code Article 682(B)(5) be enacted, relative to parental contributions for care and treatment of their child(ren) who

is in state custody and provides for advising parents of their obligation to care for their children, and, related matters.

This action is necessary to clarify current procedures for determining the amount of contribution required by a parent(s) whose child(ren) is in the care and custody of the state of Louisiana.

**Title 67**

**SOCIAL SERVICES**

**Part V. Community Services**

**Subpart 5. Foster Care**

**Chapter 35. Payments, Reimbursables, and Expenditures**

**§3501. Procedures for Determining the Amount of Contribution Required by Parents Whose Children are in the Care and/or Custody of the State of Louisiana**

A. At initial assessment when children enter the custody of the state, the gross income of the family shall be considered as a base from which to begin the assessment process. From this amount, parents are allowed a deduction of \$1,500 per dependent in the home. This includes the children who were residing in the home prior to removal. The resulting figure shall be the adjusted family income which shall be used to determine the amount of contribution. The amount of the assessment shall be 10 percent of the adjusted family income divided into 12 monthly payments. The amount would be the same for the family regardless of the number of children in care, i.e., families which have the same adjusted income but different numbers of children in care would be billed the same amount.

B. At reassessment, only changes in the composition or income of the family will be considered in the calculation. Dependent deductions of \$1,500 for family members in the home will continue to be allowed. The resulting figure is the adjusted family income. The amount shall be used to determine the amount of contribution. The yearly contribution shall be equal to 10 percent of the adjusted family income. The family will pay this one amount regardless of the number of children who are in care.

C. Parental contributions shall not be recommended if an existing child support order is in place or if good cause exists in a particular case. The exceptions for good cause shall be determined on a case by case basis by the case manager for reasons including, but not limited to short-term foster care placements; pending adoption proceedings; potential non-custodial parent placement; imminent termination of parental rights; or, when assessment is contrary to the case plan goals. These exceptions shall be documented in the case plan or court report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 17:1225 (December 1991), amended LR 36:73 (January 2010).

Kristy H. Nichols  
Secretary

1001067

**RULE**

**Department of Social Services  
Office of Family Support**

Support Enforcement  
(LAC 67:III.2301, 2509, and 2801)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services (DSS), Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), Chapter 23, Subchapter A, which provides for designation, authority, organization and staffing of support enforcement services; Chapter 25, Subchapter B, which provides for support obligation payments through income assignment; and Chapter 28, Subchapter A, which provides for non-IV-D case administration.

The Regular Session of the 2003 Louisiana Legislature repealed R.S. 46:236.1 and enacted R.S. 46:236.1.2 effective July 2, 2003, to authorize the department to develop and implement a program of family support. Amendment of this Section is necessary to provide the correct citation of authority in the Louisiana Administrative Code.

The Regular Session of the 1997 Louisiana Legislature amended R.S. 9:303 effective October 1, 1998. This amendment requires new child support orders that are not being enforced by the Department of Social Services to include, as part of the order, an immediate income assignment payable through the state disbursement unit. Amendment of this section is necessary to ensure compliance with Louisiana Revised Statute 9:303.

The Department of Social Services, Office of Family Support, Support Enforcement Services anticipates entering into a Memorandum of Understanding (MOU) with the 24th Judicial District Court (JDC) agreeing that the 24th JDC will make all income assignment orders (IAOs) payable to DSS. SES will, upon receipt of payment from the noncustodial parent or that parent's employer, remove the court ordered administrative fee and send the fee to the court before disbursing the support collected in accordance with standards for child support orders not associated with IV-D services. Amendment of this Section is necessary to comply with the provisions of the MOU.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 4. Support Enforcement Services**

**Chapter 23. Single State Agency Organization**

**Subchapter A. Designation, Authority, Organization and Staffing**

**§2301. Authority**

A. Support Enforcement Services (SES) is established in accordance with U.S.C.A., Title 42, Section 651 et seq. and R.S. 46:236.1.2 et seq.

AUTHORITY NOTE: Promulgated in accordance with U.S.C.A., Title 42, Section 651 et seq. and R.S. 46:236.1.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), amended LR 36:74 (January 2010).

**Chapter 25. Support Enforcement**

**Subchapter B. Support Obligation**

**§2509. Income Assignment**

A. In all new or modified child support orders enforced by Support Enforcement Services (SES) and all new child support orders after January 1, 1994, that are not being enforced by SES, the court shall order an immediate income assignment unless a written agreement exists between the parties for an alternate arrangement, or the court finds good cause not to require an immediate income assignment. Employers shall remit any amounts withheld through income assignment within seven days.

B. - D. ...

E. All income assignment orders shall be payable through the Louisiana state disbursement unit. Payments shall be made payable to the Department of Social Services and mailed to:

Centralized Collection Unit  
Post Office Box 260222  
Baton Rouge, Louisiana 70826-0222.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:236.3 and 45 CFR 303.100, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:1083 (November 1985), amended by the Department of Social Services, Office of Eligibility Determinations, LR 16:33 (January 1990), amended by the Department of Social Services, Office of Family Support, LR 23:748 (June 1997), LR 26:356 (February 2000), LR 36:74 (January 2010).

**Chapter 28. Non-IV-D Program**

**Subchapter A. Non-IV-D Case Administration**

**§2801. General Provisions**

A. ...

B. Payments shall be made payable to the Department of Social Services. When a payment is received from the noncustodial parent or that parent's employer, the support payment will be distributed in accordance with standards for child support orders not associated with IV-D services. The clerks of court will provide information to identify a case if requested by the Department of Social Services.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 303.100, P.L. 100-485 and R.S. 9:303; 42 U.S.C. section 654(b) and R.S. 46:236.11.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 19:1527 (December 1993), amended LR 20:449 (April 1994), LR 26:2830 (December 2000), LR 36:74 (January 2010).

Kristy H. Nichols  
Secretary

1001#066

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Nuisance Wildlife Control Operator Program  
(LAC 76:V.127)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission do hereby amend the rules for the Nuisance Wildlife Control Operator Program.

**Title 76  
WILDLIFE AND FISHERIES**

**Part V. Wild Quadrupeds and Wild Birds**

**Chapter 1. Wild Quadrupeds**

**§127. Nuisance Wildlife Control Operator Program**

**A. Purpose**

1. The purpose of this Section is to establish guidelines for the permitting of Nuisance Wildlife Control Operators (NWCO's) and the procedures to be used by the NWCO's in controlling nuisance wildlife.

2. NWCO's are defined as individuals who offer commercial services for the control of nuisance wildlife.

**B. Permits**

1. All NWCOs must have a valid NWCO permit issued by the Louisiana Department of Wildlife and Fisheries (LDWF) in their possession while engaged in nuisance wildlife control activities. NWCO permits are issued only to individuals and each individual engaged in NWCO activities must possess a NWCO permit issued in his/her name. This rule does not provide for or authorize any NWCO to name a subpermittee.

2. In addition to the NWCO permit, all NWCOs must possess a valid Louisiana trapping license and valid Louisiana basic hunting license (or equivalent) in their possession while engaged in nuisance wildlife control activities. Additionally, any NWCO servicing non-protected reptile and amphibian nuisance calls must possess a valid basic fishing license or equivalent.

3. NWCO permits will be issued on a calendar year basis (January 1-December 31) and must be renewed annually.

**C. Permit Requirements**

1. All applicants must be 18 years of age or older.

2. The applicant must achieve a minimum score of 80 percent on the LDWF NWCO examination. The examination shall consist of questions relating to wildlife biology and behavior, nuisance animal control methods and procedures, and nuisance wildlife control laws, rules and regulations. Any applicant who fails to pass the examination may take another examination no earlier than 30 days from the date of the prior examination. Applicants may not attempt to take the NWCO examination more than three times per calendar year.

3. Anyone who has been convicted of a Class II or greater wildlife violation in Louisiana, or the equivalent in another state within the past three years, or has been convicted of a felony in Louisiana or another state, shall not be eligible for a NWCO permit. Also, any person whose hunting or trapping license privileges have been revoked and is prohibited from hunting and trapping in Louisiana shall not be allowed to possess or operate under the authority of a NWCO permit.

4. All applicants must attend a LDWF sponsored NWCO training class prior to or within 6 months of receiving their permit. A class registration charge may be applied. Those NWCOs with valid permits at the time this rule becomes effective will have one year from the effective date of amended regulations to complete the training class requirement. All NWCOs are required to attend six hours of

LDWF approved continuing education every three years after attending the NWCO training class. Failure to attend the training class or obtain the six hours of LDWF approved continuing education every three years will result in revocation of the NWCO permit.

**D. Exemptions**

1. Employees of the Louisiana Department of Wildlife and Fisheries, Louisiana Department of Agriculture and Forestry, Louisiana Department of Transportation and Development, U.S. Fish and Wildlife Service, and USDA/APHIS/Wildlife Services are exempt from all NWCO permit requirements while they are on duty and carrying out official business of their respective agency. Also, city, parish, or local municipal government employees assigned to animal control duties are exempt from permit requirements while on duty and carrying out official business of their respective agency. It is recommended that exempted agencies adopt a policy requiring euthanasia of all skunks, raccoons, feral hogs, coyotes, and nutria. Animals that are not euthanized may not be released on LDWF owned or managed land such as wildlife management areas or refuges and may not be sold, bartered or exchanged.

**E. Reporting and Renewal Requirements**

1. All nuisance wildlife complaints that result in a site visit by a NWCO must be fully documented on Nuisance Wildlife Complaint Forms or in a format provided by LDWF.

2. Nuisance Wildlife Complaint Forms for the permit period must be submitted to the LDWF no later than 30 days following the expiration of the permit and NWCO permits will not be renewed until these forms are received. Reports will cover the period from December 1 of the prior license year to November 30 of the current license year. However, the 30 day grace period that follows expiration of the NWCO permit, applies to report filing only and does not authorize NWCOs to engage in nuisance wildlife control activities without a current NWCO permit.

3. Any NWCO who does not submit his/her report by the 30th day after the expiration date of the permit, or who submits a false or materially incomplete report shall be issued a citation for violation of Louisiana Wildlife and Fisheries Commission rules and regulations. If the citation does not result in a conviction, plea of guilty, or plea of no contest, the NWCO will be considered for reapplication upon receipt of the late Nuisance Wildlife Complaint Form(s).

4. Report forms must be current and shall be available for inspection at all times by Wildlife Enforcement Agents or any other authorized representatives of the department. NWCOs must maintain copies of all Nuisance Wildlife Complaint Forms for three years.

**F. Procedures and Guidelines**

1. The NWCO permit authorizes the holder to capture, euthanize or relocate designated species of wildlife by safe and effective means at any time of the year and without limits provided the operator is acting on a valid, documented wildlife complaint.

2. The following procedures and guidelines for NWCO permittees shall be in effect to establish what species

of wildlife may be taken under the authority of this permit, the legal methods that may be used to take nuisance wildlife under the authority of this permit, and the legal methods of disposing of nuisance wildlife.

a. Only wildlife damage or nuisance complaints affecting humans and/or their property are considered valid complaints. Complaints involving conflicts between two or more species of wildlife are not valid nuisance wildlife complaints.

b. NWCO permittees are only authorized to live trap and relocate, live trap and euthanize, or lethally trap the following species when such action is warranted by a valid nuisance wildlife complaint: armadillo, beaver, bobcat, coyote, feral hogs, fox, mink, muskrat, nutria, opossum, otter, rabbit, raccoon, squirrel (including flying squirrel) and skunk. NWCO permittees are only authorized to live trap and relocate, live trap and euthanize, or lethally trap reptiles and amphibians that are not protected by federal law. Nuisance birds may be controlled as provided by existing law. Bats may be controlled by exclusion or by capture and relocation only. Bats shall not be controlled by any lethal methods. It is recommended all NWCOs working with bats complete the Bat Conservation International (BCI) professional excluders' course available on-line.

c. The NWCO permit does NOT authorize the capture and/or handling of white-tailed deer, bears, wild turkeys or alligators.

d. The sale, trade, barter, gifting or retention of any wildlife or part thereof taken under the authority of a NWCO permit is prohibited except that furbearers taken during the open trapping season may be sold as provided by law. Additionally, individuals wishing to trap coyotes outside of open trapping season may do so with the purchase of an annual special permit which may be issued to a Louisiana Department of Wildlife and Fisheries approved applicant for the trapping of coyotes only, outside of the annual trapping season. In order for the permittee to sell live coyotes he must also possess a nongame quadruped breeders license (R.S. 56:262.1) and a valid trapping license.

e. NWCO permittees must follow all state and federal laws, rules and regulations that apply to the taking of wildlife, with the exception of season dates and bag limits, except as otherwise provided in this section.

f. All wildlife taken under a NWCO permit shall be taken and disposed of in a manner to ensure safe and effective handling and/or euthanasia. Acceptable carcass disposal options include deep burial (four feet), incineration, and sanitary landfills. Disposal of carcasses must be in compliance with all local codes and ordinances. Euthanasia of a captured animal is to be performed under the guidelines adopted by the American Veterinary Medical Association (AVMA).

g. Traps or other capture devices set for live capture (including leg hold traps) shall be checked a minimum of once every 24 hours and all animals removed. Traps intended to result in immediate death must be checked a

minimum of once every 48 hours. All traps and other capture devices shall be marked with permanent tags bearing the telephone number and LDWF issued permit number of the NWCO.

h. Only legal methods of take, as provided by existing law, shall be authorized under the NWCO permit. In addition to legal traps and snares, nets and capture by hand are authorized.

i. All traps and other capture devices shall be set in a manner that:

- i. will minimize the risk to non-target animals;
- ii. will minimize the risk to the public and to pets;

and

- iii. are out of the view of the general public.

j. The NWCO permit does not authorize the use of firearms, except that nutria, beaver, coyotes, armadillos and feral hogs where legal, may be taken as provided by existing law. Firearms may also be used in accordance with the American Veterinary Medical Association (AVMA) guidelines on euthanasia. Discharge of any firearms shall be subject to all state, parish and municipal restrictions and ordinances.

k. When relocation is authorized, the NWCO may have the wildlife in possession for no more than 24 hours unless specifically authorized by the department.

l. Wildlife that is relocated shall be released at least five miles outside of any city limit and must be released within the state of Louisiana.

m. Wildlife shall not be released on private land without written permission of the landowner or landowner designee.

n. Wildlife shall not be released on public land without first obtaining written permission from the governmental entity owning or administering the release property.

o. Captured wildlife that appears to be sick or injured shall not be relocated. NWCOs must contact the appropriate LDWF regional office for instructions regarding sick wildlife. Injured animals may be delivered to a licensed rehabilitator or euthanized in accordance with AVMA guidelines.

p. Raccoons, skunks, feral hogs, coyotes and nutria shall not be relocated and shall be euthanized, within 12 hours of capture, in accordance with the current AVMA guidelines on euthanasia.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6 (10) and (15), and R.S. 56:112, et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 30:2080 (September 2004), amended LR 36:75 (January 2010).

Robert J. Barham  
Secretary

1001#055

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Removal of Abandoned Crab Traps (LAC 76:VII.367)

The Wildlife and Fisheries Commission does hereby amends rules in LAC 76:VII.367, which provides for an abandoned crab trap removal program. Authority to establish these regulations is vested in the Commission by R.S. 56:332(N).

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery  
§367. Removal of Abandoned Crab Traps**

A. The use of crab traps shall be prohibited from 6:00 a.m., February 27, 2010 through 6:00 a.m. March 8, 2010 within that portion of Lafourche Parish, Jefferson Parish, and Plaquemines Parish as described below.

1. From a point originating from the intersection of the Gulf Intracoastal Waterway and the northern shoreline of Hero Canal; thence due north to a point along the northern shoreline of the Gulf Intracoastal Waterway; thence southward and then westward along the northern shoreline of the Gulf Intracoastal Waterway to a point opposite the western shoreline of Bayou Perot; thence due south to the western shoreline of Bayou Perot; thence southward along the western shoreline of Bayou Perot to Little Lake; thence southward along the western shoreline of Little Lake to 29 degrees, 30 minutes, 00 seconds north latitude; thence eastward along 29 degrees, 30 minutes, 00 seconds north latitude to the eastern shoreline of Wilkinson Canal; thence northward along the eastern shoreline of Wilkinson Canal to its termination; thence due north to the western shore of the Mississippi River; thence northwestward along the western shore of the Mississippi River to a point due east of the northern shoreline of Hero Canal; thence due west to the northern shoreline of Hero Canal; thence westward along the northern shoreline of Hero Canal and terminating at its intersection with the Gulf Intracoastal Waterway.

B. All crab traps remaining in the closed area during the specified period shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Anyone is authorized to remove these abandoned crab traps within the closed area. No person removing crab traps from the designated closed areas shall possess these traps outside of the closed area. The Wildlife and Fisheries Commission authorizes the Secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR

30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 34:97 (January 2008), LR 36:77 (January 2010).

Robert J. Barham  
Secretary

1001#053

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Special Bait Dealer's Permit (LAC 76:VII.329)

The Wildlife and Fisheries Commission does hereby amends rules in LAC 76:VII.329, which provide for a special bait dealer's permit program. Authority to establish these regulations is vested in the commission by R.S. 56:497(C).

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery  
§329. Special Bait Dealer's Permit**

A. Policy. The special bait dealer's permit is intended solely for the benefit of the recreational fishing public which desires to use live shrimp and live croaker as bait during the closed season between the spring and fall shrimp seasons. Its purpose is to allow the uninterrupted operation of those commercial establishments which sell live bait shrimp and live croaker to the fishing public during the closed season beginning May 1 of each year until the opening of the spring inshore shrimp season and between the spring and fall shrimp season. The permit is not intended for the direct use of recreational fishermen, charter boats, commercial fishermen who sell dead shrimp or croaker, or for any other entity which may wish to catch shrimp or croaker for their own use during the closed season.

**B. Application**

1. Applications for the special bait dealer's permit will be accepted from January 1 through April 30 of each year. All applications should be mailed to the department via certified mail.

2. Applications will be accepted only from the owner of an existing business which sells or plans to sell live bait to recreational fishermen.

3. Applications must be notarized and made on forms provided by the department; all information requested must be provided before the application will be processed.

4. Applicants must show proof of having acquired all necessary licenses and permits before the permit will be issued. This includes, if relevant, boat registration, vessel license, gear license, commercial fishing licenses, and name of fisherman; wholesale/retail seafood dealers license, state sales tax number, and a copy of the applicant's and the fisherman's valid driver's license. A background check for wildlife violations of the applicant and the fisherman will be made. Any person convicted of any Class Two or greater

wildlife or fisheries violation within the previous 3 years prior to the date of application shall not qualify to obtain a special bait dealer's permit or be onboard any vessel engaged in permitted activities.

5. Beginning in 2008, applicant must post a \$1,000 cash bond before the permit is issued. This bond will be forfeited if the permittee, his employee, or his contractor violates any provision of the rules and regulations concerning the special bait dealer's permit or if the permittee, his employee, or his contractor violates any commercial fishing law or regulation while operating under the permit. The fee for the special bait dealer's permit shall be \$110.

6. Before the permit is issued an agent of the department must inspect the facilities of the applicant and verify that the applicant is operating a commercial establishment which sells live shrimp or live croaker to the fishing public for use as bait, and that the applicant does have facilities to maintain live shrimp or croaker. Notice to the public must be posted that live bait shrimp or croaker are available for sale. The applicant must have onshore facilities, including tanks with a combined minimum capacity of 300 gallons, available to hold live shrimp or live croaker. These tanks must have provisions for aeration and/or circulation of the water in which live shrimp or croaker are held prior to sale. In determining total tank capacity of onshore facilities, the agent shall not count any tank with a capacity of less than 30 gallons.

7. Only the applicant, his designated employee, or his contractor may operate under the permit. At the time of application, the applicant will specify the vessel and who will be working under the permit. Should the vessel or these persons change, the applicant shall submit an amended application listing the vessel or those persons and be in receipt of an approved amended permit before the new vessel or persons operate under the permit. The permit is not transferable to any other person or vessel. The entire original permit must be carried on the vessel while in operation.

8. No person shall transfer any shrimp or croaker taken under a permit from one vessel to another.

#### C. Operations

1. Only the vessel and captains listed in the permit shall be used with the permit. Live wells, aeration tanks, and other vessel facilities to maintain live shrimp or croaker must be carried on or built into this vessel; it must be used for both taking and transporting the live shrimp or croaker. The vessel must have a minimum of one compartment or tank with a minimum capacity of 30 gallons. No other vessel may be used under the permit. Signs which identify the vessel as working under the special bait dealer's permit shall be posted on the vessel. These signs shall be visible from either side of the vessel and from the air; the word "BAIT" and the permit number shall be placed on these signs in letters at least 12 inches high.

2. Permitted gear is limited to one trawl not to exceed 25 feet along the cork line 33 feet along the lead line or two skimmer nets having an individual net frame size not more than 12 and 1/2 feet measured horizontally or 12 feet measured vertically or 17 feet 4 inches measured diagonally. These are the only gears which can be used or carried aboard the permitted vessel while the vessel is operating under the

permit; no other commercial fishing gear may be on the vessel when it is being used under permit.

3. No more than two gallons of dead shrimp or croaker or combination thereof may be aboard the vessel while it is operating under the permit. All dead shrimp or croaker or combination thereof in excess of two gallons must be immediately returned to the water. Shrimp or croaker dying in onshore holding facilities may be sold for bait use only, in lots not to exceed 16 ounces in weight.

4. Bait shrimp or croaker may be taken only from official sunrise to official sunset; no night fishing is allowed under this permit.

5. The entire original permit must be in the possession of the person operating the vessel while it is engaged in taking shrimp or croaker under the terms of the permit.

6. Each time the permit is used the permittee must notify the department by contacting the Communications Section on the designated toll free telephone number provided on the permit and recording the confirmation number received. Before the vessel departs the dock under the permit, the department must be advised of the time of departure and the sub-basin code corresponding to the department's trip ticket sub-basin map in which trawling or skimming will take place; immediately after the permitted vessel returns to the dock the department must be notified of the time of return by contacting the Communications Section on the designated toll free telephone number provided on the permit.

7. The permittee shall maintain an up-to-date record of the activities conducted under the permit on forms provided by the department for that purpose. These records shall be kept onboard the vessel and made available for inspection by agents of the department upon request by said agents at any time and shall include the permittee's name and permit number, date, departure time, fishing location, gear used, confirmation number, return time, and number of live shrimp or live croaker harvested. All applicable record information shall be completed before fishing operations begin. In addition, any agent of the department shall be allowed to make an on site inspection of any facilities operating under the permit, at any time. Permittee shall submit to the department, not later than September 1 following the live bait season, this record of permit activities on forms provided by the department. Nothing herein this section shall exempt the permittee from trip ticket reporting requirements as provided for in R.S. 56:306.4.

#### D. Penalties

1. No person shall violate any provision of this Section. Violations of any provision of this Section shall constitute a Class 4 violation as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:326.3 and 56:497(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 3:210 (April 1977), amended LR 15:867 (October 1989), LR 19:215 (February 1993), LR 23:86 (January 1997), LR 33:864 (May 2007), LR 36:77 (January 2010).

Robert J. Barham  
Secretary

1001#052

# Notices of Intent

## NOTICE OF INTENT

### Department of Economic Development Office of Business Development

CDC Certification Program  
(LAC 13:I.Chapter 35)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., R.S. 47:6031 and R.S. 33:130.751 et seq., the Department of Economic Development hereby gives notice of its intent to adopt the following Rule. The purpose of this Rule is to establish program policies and procedures in the administration of the Community Development Corporation and Community Development Financial Institution Certification Program.

#### Title 13

#### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 35. Louisiana Community Economic Development Act

#### Subchapter A. General Provisions

#### §3501. Purpose

A. The purpose of this Chapter is to administer the Louisiana Community Economic Development Act as established by R.S. 33:130.751 et seq. and R.S. 47:6031.

B. The purpose of this program is to provide for community development corporations and community development financial institutions and to encourage economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

#### §3503. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 33:130.751 et seq., unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

*Award Agreement*—that agreement or contract hereinafter referred to between the applicant and the department through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms, conditions, and performance objectives of the award provided pursuant to these rules.

*Community Development Corporation (CDC)*—a non-profit corporation which satisfies all of the requirements of R.S. 33:130.752(1) and meets the LANO standards of excellence.

*Community Development Financial Institution (CDFI)*—an organization which satisfies all of the requirements of R.S. 33:130.752(2).

*Department*—Department of Economic Development, or their designee.

*Donation*—either *inter vivos* or *mortis causa*, in the form established by Louisiana law.

*Contribution*—a gift, payment, or deposit of money or anything of value, or the forgiveness of a loan or of a debt.

*Low Income*—an income level at or below 80% of the mean income for a family of similar size within the state.

*Sale Below Cost*—a contract whereby a person transfers ownership of a thing to another for a price in money, in the form established by Louisiana law, at a price below its appraised value, as evidenced by appropriate documentation.

*Secretary*—Secretary of the Department of Economic Development, or designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

#### Subchapter B. Certification Program

#### §3505. Eligibility Requirements for Certification

A. Community Development Corporation (CDC). An applicant must meet all of the following requirements:

1. is chartered pursuant to Chapter 2 of Title 12 of the Louisiana Revised Statutes of 1950;
2. is tax exempt pursuant to Section 501(C)(3) of the Internal revenue Code of 1986, as amended;
3. has a primary mission of developing and improving low-income communities and neighborhoods through economic and related development;
4. has activities and decisions initiated, managed, and controlled by the constituents of the community served;
5. does not provide credit, capital, or other assistance from public funds in an amount greater than twenty-five thousand dollars at one time or in one transaction;
6. is not a non-profit organization with the sole purpose of providing housing to neighborhoods or technical assistance to other nonprofit organizations;
7. has been certified or recertified as a community development corporation as provided in this Subpart; and
8. meets the LANO standard of excellence.

B. Community Development Financial Institute (CDFI). An applicant must meet all of the following requirements:

1. has a primary purpose of promoting community development by providing credit, capital, or development services to small business or home mortgage assistance to individuals, including, but not limited to, capital access programs, micro-lending, franchise financing, and guaranty performance bonds;
2. maintains, through representation on its governing board, accountability to persons in need of the institution's services;
3. is not an agent or instrumentality of the United States, or of a state political subdivision of a state, nor maintains an affiliate relationship with any of these entities;
4. maintains a goal of providing a majority of its services to low-income individuals, minorities, or females or in rural areas;
5. provides capital and technical assistance to small or micro-business or mortgage assistance to individuals;

6. does not provide credit, capital, or other assistance in an amount greater than two hundred fifty thousand dollars at one time or in one transaction;

7. has been certified or recertified as a community development financial institution as provided for in this Subpart; and

8. may be a federally or state-chartered financial institution holding company which qualifies as a community development financial institution only if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

### **§3507. Application Procedures**

A. An applicant for certification shall submit the following documents to the department:

1. complete, notarized certification application;
2. organizational management;
  - a. certificate of incorporation;
  - b. either 501 (c) (3) tax exempt letter or CDFI fund certification letter;
  - c. by-laws; and
  - d. program of work;
3. board information;
  - a. names and addresses of the partners, officers, directors or trustees and those principal owners or members;
  - b. minutes of the four most recent board of directors meetings;
4. financial information;
  - a. a copy of the most recent financial audit; and
  - b. a copy of the fiscal budget, including year-to date expenditures;
5. business plan;
6. an application fee of \$300;
7. any additional information requested by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

### **§3509. Qualification**

A. The department shall review the application and supporting documentation, and if necessary conduct a site visit to determine qualification.

B. The department shall issue the applicant a final written determination, indicating either approval or denial of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

### **§3511. Duration of Certification**

A. If approved, certification shall be valid for two years from the date of certification.

B. A certified CDC or CDFI shall submit to the Department, on or before the anniversary date of their certification; a notarized annual financial report complying with the requirements of R.S. 33:130.754(F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

### **§3513. Renewal of Certification**

A. Certification may be renewed for subsequent two-year periods.

B. Applicants must re-apply to the department, submit all required documentation and an application fee of \$175.

C. The department shall review the application, supporting documentation, and verify that all reporting requirements have been complied with, to determine qualification for the re-certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

### **§3515. Denial of Certification**

A. The department shall serve notice of intent to deny certification or renewal of certification, or to revoke an existing certification.

B. Such notice shall be a written determination by the department, including a brief statement of the reasons alleged for denial.

C. Such notice shall be served by certified mail or by mail service requiring a return receipt.

D. A denied applicant may request a hearing within 30 days of receiving notice, by filing a written request for hearing with the department.

1. Such hearing shall be conducted pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

## **Subchapter C. Administration of Grants and Loans.**

### **§3517-3525 Reserved**

### **Subchapter D. Certification of Tax Credits**

### **§3527-3535 Reserved**

#### **Family Impact Statement**

The proposed Rule (LAC 13:I.Chapter 35, Louisiana Community Economic Development Act) should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### **Public Comments**

Interested persons should submit written comments on the proposed Rule to Shawn Welcome through the close of business on March 1, 2010 at P.O. Box 94185, Baton Rouge, LA 70804-9185 or 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by email to: swelcome@la.gov.

## Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held on March 2, 2010 at 10 a.m. at the Department of Economic Development, 1051 North Third St., Baton Rouge, LA 70802.

Kristy Mc Kearn  
Undersecretary

and donations. Increased contributions and donations, and grants and loans if made in the future, may allow the certified entities to expand their activities, but the effects are speculative and not measurable.

Kristy McKearn  
Undersecretary  
1001#041

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: CDC Certification Program

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment  
Standards and Practices  
(LAC 28:CXI.Chapters 3, 7, 11, 13, 18, 20, 33, and 35)

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Act 374 of the 2007 Regular Session enacted the Louisiana Community Economic Development Act, providing for certification of community development corporations and community development financial institutions, grants and loans to such entities from specifically appropriated funds (no such appropriations have been made), and income and corporate franchise tax credits for donations to such entities Act 374 will sunset on August 15, 2010. The proposed rule establishes procedures for certification of community development corporations and community development financial institutions, and will be administered by existing LED staff without additional costs. If in the future grants and loans are made or tax credits certified (no procedures for which are included in the proposed rule), additional staffing costs could be incurred, should these programs exceed the capacity of existing staff.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Certification of development corporations and community development financial institutions will have no direct effect on revenue collections. If in the future tax credits are certified for donations to such entities, state revenue would decline by the amount of the claimed credits. Three entities have contacted LED in regard to obtaining certification; the amount of potential donations to these entities for which tax credits might be certified cannot be determined, nor can it be determined how many other entities might seek certification. The Act provides for maximum tax credits per business of \$1 Million per year and tax credits must be earned prior to the sunset date (so the maximum tax credits that could be earned for donations to these three entities is \$3 Million). The Act provides tax credits are earned at the rate of 25% of the donation, offset income tax for the tax period in which the credit is earned and franchise tax for the following tax period (credit for businesses divided in equal portions for five years), and must be used by the end of the fifth tax year after granted. Grants and loans could be made in the future if funds are specifically appropriated for such purpose.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Entities seeking certification must pay an application fee of \$300, and a renewal fee of \$175 (certifications are valid for two years). The entities currently expressing an interest in certification believe they will receive an economic benefit by thereby enhancing their perceived status with potential contributors. Certified entities would also benefit if in the future grants and loans were made, and donors to certified entities would benefit if in the future tax credits were certified.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Certification, and tax credits if certified in the future, may enhance the ability of certified entities to attract contributions

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to Bulletin 118—Statewide Assessment Standards and Practices: §312. Administrative Error, §701. Overview of Assessment Programs in Louisiana, §1127. Grade 4 Achievement Level Descriptors, §1129. Grade 8 Achievement Level Descriptors, §1151. Retests and Rescores, §1325. Grade 10 Achievement Level Descriptors, §1327. Grade 11 Achievement Level Descriptors, §1349. Rescores, §1803. Introduction, §1819. Double Jeopardy Rule, §1821. First Cohort, §1823. Rescores, §1825. EOC Administration Rules, §1827. EOC Retest Administration, §1829. EOC Transfer Rules, §2011. Grade 4 Achievement Level Descriptors, §2012. Grade 5 Achievement Level Descriptors, §2013. Grade 6 Achievement Level Descriptors, §2014. Grade 7 Achievement Level Descriptors, §2015. Grade 8 Achievement Level Descriptors, §2016. Grade 9 Achievement Level Descriptors, §2017. Grade 10 Achievement Level Descriptors, §2019. Grade 11 Achievement Level Descriptors, §2031. Double Jeopardy Rule, §2033. Rescores, §2035. LAA 2 Administration Rules, §2037. Summer Retest Administration, §2039. LAA 2 Transfer Students, §2041. Student Membership Determination, §3303. Special Education Students, §3307. Limited English Proficient Students, §3501. Approved Home Study Program Students, and §3507 Office of Juvenile Justice.

The document will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited policy guidelines to Chapter 18, End-of-Course Tests (EOCT) and Chapter 20, LEAP Alternate Assessment, Level 2 (LAA 2) statewide assessment programs. New policy language updates, double jeopardy rules, first cohort, rescores, EOCT administrative rules, EOCT retest administration, and EOCT transfer rules are being added to Chapter 18, End-Of-Course Tests (EOCT). New policy language, updates, double jeopardy rules, rescore requests, administration rules, retest administration rules, transfer student rules, and student membership rules are being added to Chapter 20, LEAP Alternate Assessment Level 2 (LAA 2). The new policy language aligns LAA 2 and EOCT with the guidelines of the statewide assessments, Graduation Exit Examination (GEE), and Louisiana Educational Assessment Program (LEAP).

Policy language was also edited in chapters 3, 7, 11, 13, 33, and 35 to update statewide assessment information.

**Title 28  
EDUCATION**

**Part CXI. Bulletin 118 Statewide  
Assessment Standards and Practices**

**Chapter 3. Test Security**

**§312. Administrative Error**

A. - F. ...

G. Administrative errors that result from failure to transfer answers from a test booklet onto an answer document require the following steps:

1. the LEA superintendent will place a request on behalf of individual students, which request must include a description of the administrative error and a corrective plan of action, to the state superintendent of education to have the testing vendor send to the district the student's test booklet and a new answer document;

2. the DTC and STC will transfer only the answers not initially transferred from the test booklet onto the new answer document; and

3. the DTC will return all testing materials to the vendor, who will assess the LEA a fee for the service.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1532 (July 2005), amended LR 32:234 (February 2006), LR 33:258 (February 2007), LR 33:218 (February 2007), LR 36:

**Chapter 7. Assessment Program Overview**

**§701. Overview of Assessment Programs in Louisiana**

A. Norm-Referenced and Criterion-Referenced Testing Programs Since 1986

Name of Assessment Program	Assessment Population	Administered
<b>Kindergarten Screening</b>		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	Fall 1987–
<b>Norm-Referenced Tests (NRTs)</b>		
California Achievement Test (CAT/F)	Grades 4, 6, and 9	Spring 1988–Spring 1992 (no longer administered)
California Achievement Test (CAT/5)	Grades 4 and 6 Grade 8	Spring 1993–Spring 1997 Spring 1997 only (no longer administered)
Iowa Tests of Basic Skills (ITBS) (form L) and Iowa Tests of Educational Development (ITED) (form M)	Grades 4, 6, 8, 9, 10, and 11	Spring 1998 (no longer administered)
ITBS ITED (form M)	Grades 3, 5, 6, and 7 Grade 9	Spring 1999–Spring 2002 (no longer administered)
ITBS ITED (form B)	Grades 3, 5, 6, and 7 Grade 9	Spring 2003–Spring 2005 (no longer administered)
<b>Criterion-Referenced Tests (CRTs)</b>		
National Assessment of Educational Progress (NAEP)	Grades 4, 8, and 12	Spring 1990–

Name of Assessment Program	Assessment Population	Administered
Louisiana Educational Assessment Program (LEAP)	Grades 3, 5, and 7	Spring 1989–Spring 1998 (no longer administered)
Graduation Exit Examination (“old” GEE)	Grades 10 and 11	Spring 1989–Spring 2003 (state administered) Fall 2003– (district administered)
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	Grades 4 and 8	Spring 1999–
LEAP (Science and Social Studies)	Grades 4 and 8	Spring 2000–
Graduation Exit Examination (GEE) (ELA and Mathematics)	Grade 10	Spring 2001–
GEE (Science and Social Studies)	Grade 11	Spring 2002–
End-Of-Course Tests (EOCT)	Algebra I	Fall 2007–
EOCT	Algebra I	Spring 2008–
EOCT	English II	Fall 2008–
EOCT	English II	Spring 2009–
EOCT	Geometry	Fall 2009–
EOCT	Geometry	Spring 2010–
<b>Integrated NRT/CRT</b>		
Integrated Louisiana Educational Assessment Program (iLEAP)	Grades 3, 5, 6, 7, and 9	Spring 2006–
<b>Special Population Assessments</b>		
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in Grades 3–11.	Spring 2000–2007
LAA 1	ELA and Mathematics (grade spans 3–4; 5–6; 7–8; 9–10); Science (grades 4, 8, and 11)	Revised Spring 2008–
Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4, 8, and 10) Science and Social Studies (Grade 11)	Grades 4, 8, 10, and 11	Spring 2006–
LAA 2 ELA and Mathematics	Grades 5, 6, 7, and 9	Spring 2007–
LAA 2 Science and Social Studies	Grades 4 and 8	Spring 2008–
Louisiana Alternate Assessment-B (LAA-B) [“out-of-level” test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in Grades 3–11.	Spring 1999–Spring 2003 (no longer administered)
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in Grades K–12	Spring 2005–

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), LR 34:66 (January 2008), LR 34:1352 (July 2008), LR 35:218 (February 2009), LR 36:

**Chapter 11. Louisiana Educational Assessment Program**

**Subchapter C. LEAP Achievement Level Descriptors §1127. Grade 4 Achievement Level Descriptors**

**A. Grade 4 English Language Arts Achievement Level Descriptors**

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the following skills.</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>1. understand what they read, make generalizations, and extend meanings by integrating personal experiences and other reading experiences;</li> <li>2. explain the author's intent and purpose;</li> <li>3. identify literary devices such as figurative language; and</li> <li>4. research topics by selecting and evaluating information in a variety of sources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>1. express analytical, critical, and/or creative thinking in response to a writing task;</li> <li>2. develop responses with sharply focused central ideas, cohesive organization, and thorough elaboration;</li> <li>3. demonstrate awareness of the intended audience through use of creative language and sentence structure and strong personal style or voice; and</li> <li>4. demonstrate consistent command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the following skills.</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>1. demonstrate overall understanding of what they read;</li> <li>2. extend ideas in texts by making connections to their own experiences, making inferences, and drawing conclusions;</li> <li>3. identify an author's intent and purpose; and</li> <li>4. research topics by selecting and evaluating information in a variety of sources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>1. express analytical, critical, and/or creative thinking in response to a writing task;</li> <li>2. develop a response with a focused central idea through use of logical organization and sufficient elaboration;</li> <li>3. demonstrate an awareness of the intended audience through use of appropriate language and sentence structure and personal style or voice; and</li> <li>4. demonstrate reasonable command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Basic</b>
<p>Students scoring at this level generally exhibit the following skills.</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>1. demonstrate some understanding of what they read;</li> <li>2. make obvious connections between information and their personal experiences;</li> <li>3. extend ideas in the text by making simple inferences; and</li> <li>4. research topics by locating information in a variety of sources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>1. express some critical or creative thinking in response to a writing task;</li> <li>2. develop responses with central ideas supported with some organization and elaborated with a few supporting details;</li> <li>3. demonstrate audience awareness through use of general vocabulary, some sentence variety, and some evidence of personal style or voice; and</li> <li>4. make errors in spelling, grammar, punctuation, and capitalization that interfere with communication to the reader.</li> </ol>

<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the following skills.</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>1. demonstrate partial understanding of what they read;</li> <li>2. make limited connections between texts and their own personal experiences;</li> <li>3. identify obvious meanings in texts and make limited or simple inference; and</li> <li>4. research topics by locating information in commonly used resources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>1. demonstrate a limited response to a writing task;</li> <li>2. develop responses with vague or weak central ideas, weak organization, and few or limited details;</li> <li>3. demonstrate limited audience awareness through use of simple or inappropriate vocabulary, simple sentences, and little to no evidence of personal style or voice; and</li> <li>4. demonstrate inconsistent or little command of spelling, grammar, capitalization, and punctuation.</li> </ol>
<b>Unsatisfactory</b>
<p>Students scoring at this level generally have not demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>In the areas of reading and use of resources, students at this level have <i>not</i> exhibited the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate an understanding of overall meaning of what they read;</li> <li>2. make connections between information in texts and their own experiences;</li> <li>3. identify obvious meaning in texts; or</li> <li>4. locate information in commonly used resources.</li> </ol> <p>In the area of writing, students at this level have <i>not</i> exhibited the ability to:</p> <ol style="list-style-type: none"> <li>1. develop an appropriate response to a writing task;</li> <li>2. focus on a central idea and demonstrate observable organization and supporting details;</li> <li>3. demonstrate audience awareness through use of appropriate vocabulary and sentence structure and personal style or voice; or</li> <li>4. demonstrate acceptable command of spelling, grammar, capitalization, and punctuation.</li> </ol>

**B. Grade 4 Mathematics Achievement Level Descriptors**

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. solve complex and non-routine real-world problems in all the Louisiana mathematics content strands;</li> <li>2. display mastery in the use of four-function calculators, rulers, and geometric shapes;</li> <li>3. draw logical conclusions and justify answers and solution processes by explaining the procedures and the rationale for using them;</li> <li>4. go beyond the obvious in their interpretations; and</li> <li>5. communicate their thoughts clearly and concisely.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. use whole numbers to estimate, compute, and determine whether results are reasonable;</li> <li>2. conceptually understand fractions, decimals, and percents and their relationships;</li> <li>3. solve real-world problems in all the Louisiana mathematics content strands;</li> <li>4. accurately use four-function calculators, rulers, and geometric shapes appropriately;</li> <li>5. employ problem-solving strategies such as identifying and using appropriate information; and</li> <li>6. organize and present written solutions with both supporting information and explanations of how they were achieved.</li> </ol>

<b>Basic</b>
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. estimate and use basic facts to perform simple computations with whole numbers;</li> <li>2. show some understanding of fractions, decimals, and percents and their relationships;</li> <li>3. solve some simple real-world problems in all the Louisiana mathematics content strands;</li> <li>4. use—with some degree of accuracy—four-function calculators, rulers, and geometric shapes; and</li> <li>5. provide written responses that are often minimal and presented without supporting information.</li> </ol>
<b>Approaching Basic</b>
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. use basic facts to perform simple computations with whole numbers;</li> <li>2. recognize fractions, decimals, and percents;</li> <li>3. exhibit difficulty applying conceptual knowledge in solving real-world problems;</li> <li>4. use—with some degree of accuracy—four-function calculators, rulers, and geometric shapes; and</li> <li>5. provide, at best, only minimal written responses.</li> </ol>
<b>Unsatisfactory</b>
Students scoring at this level have not demonstrated the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally have <i>not</i> exhibited the ability to: <ol style="list-style-type: none"> <li>1. use basic facts to perform simple computations with whole numbers;</li> <li>2. recognize fractions, decimals, and percents;</li> <li>3. apply conceptual knowledge in solving real-world problems;</li> <li>4. use—with some degree of accuracy—four-function calculators, rulers, and geometric shapes; and</li> <li>5. provide relevant written responses.</li> </ol>

### C. Grade 4 Science Achievement Level Descriptors

<b>Advanced</b>
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. design and carry out scientific investigations by selecting and using appropriate tools, technology, and techniques/methods;</li> <li>2. formulate appropriate questions that demonstrate critical thinking and a broad base of scientific knowledge;</li> <li>3. interpret relationships and make inferences based on data and apply to new situations;</li> <li>4. organize data in graphic form, evaluate validity of data, and draw/justify conclusions based on data;</li> <li>5. develop, elaborate, and modify predictions, models, and explanations;</li> <li>6. use/apply concepts about properties of objects/materials, position/motion of objects, and forms of energy to new ideas/situations;</li> <li>7. use/apply concepts about characteristics, life cycles, and environments of organisms to recognize—and analyze observed phenomena;</li> <li>8. use/apply concepts about properties of Earth materials, weather, and objects in the night sky to predict/justify patterns and relationships; and</li> <li>9. use/apply concepts about interrelationships among the human, biological, chemical, and physical aspects of the environment.</li> </ol>

<b>Mastery</b>
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. design and carry out scientific investigations using appropriate methods, tools, technology, and techniques;</li> <li>2. formulate appropriate questions demonstrating broad base of scientific knowledge;</li> <li>3. identify relationships based on data and apply to new situations;</li> <li>4. organize data in a graphic form, draw conclusions, justify conclusions, and make predictions based on data;</li> <li>5. explain and connect concepts about properties of objects/materials, position/motion of objects, and formation of energy;</li> <li>6. explain and connect concepts about characteristics, life cycles, and environments of organisms;</li> <li>7. explain and connect concepts about properties of Earth materials, weather, and objects in the night sky; and</li> <li>8. explain and connect concepts about the interrelationships among the human, biological, chemical, and physical aspects of the environment.</li> </ol>
<b>Basic</b>
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. perform simple scientific tasks when given clear, sequential directions;</li> <li>2. recognize questions that are appropriate to investigation;</li> <li>3. organize and present data in a graphic form and draw conclusions based on data;</li> <li>4. demonstrate basic knowledge/understanding of properties of objects, motion of objects, and forms of energy as they apply to their everyday life;</li> <li>5. demonstrate basic knowledge/understanding of characteristics, life cycles, and environments of organisms and relationships;</li> <li>6. demonstrate knowledge/understanding of basic concepts of properties of Earth materials, weather, and objects in the night sky; and</li> <li>7. demonstrate knowledge/understanding of basic components of an ecosystem and recognize how change impacts the system.</li> </ol>
<b>Approaching Basic</b>
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. perform portions of simple scientific tasks when given clear, sequential directions;</li> <li>2. read/interpret some data in a graphic form;</li> <li>3. respond to simple directed questions;</li> <li>4. exhibit partial understanding of properties of objects, motion of objects, and forms of energy as they apply to their everyday life;</li> <li>5. exhibit partial understanding of characteristics, life cycles, and environments of organisms and relationships;</li> <li>6. exhibit partial understanding of basic concepts of properties of Earth materials, weather, and objects in the night sky; and</li> <li>7. exhibit partial understanding of basic components of ecosystems and recognize how change impacts systems.</li> </ol>
<b>Unsatisfactory</b>
Students scoring at this level have not demonstrated the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally have <i>not</i> exhibited the ability to: <ol style="list-style-type: none"> <li>1. perform portions of simple scientific tasks when given clear, sequential directions;</li> <li>2. read/interpret some data in a graphic form;</li> <li>3. respond to simple directed questions;</li> <li>4. exhibit partial understanding of properties of objects, motion of objects, and forms of energy as they apply to their everyday life;</li> <li>5. exhibit partial understanding of characteristics, life cycles, and environments of organisms and relationships;</li> <li>6. exhibit partial understanding of basic concepts of properties of Earth materials, weather, and objects in the night sky; and</li> <li>7. exhibit partial understanding of basic components of ecosystems and recognize how change impacts systems.</li> </ol>

D. Grade 4 Social Studies Achievement Level Descriptors

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. interpret major geographic features on maps and globes;</li> <li>2. classify geographic vocabulary;</li> <li>3. analyze the connection between people;</li> <li>4. compare geographical data;</li> <li>5. compare the world in spatial terms; and</li> <li>6. compare processes that shape Earth.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. evaluate the structure and purpose of government; and</li> <li>2. interpret rights as stated in the U.S. Constitution.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. evaluate the economic factors involved in a choice or a decision; and</li> <li>2. analyze decisions made by individuals, households, businesses, and governments and their economic outcomes.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. express the significance of key historical people, events, and documents;</li> <li>2. use an understanding of historical perspective, time, and chronology to analyze past and current events;</li> <li>3. interpret both primary and secondary sources; and</li> <li>4. evaluate the social and economic impact of major scientific and technological advancements.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. analyze and compare major geographic features on maps and globes;</li> <li>2. compare the connection between people and the environment;</li> <li>3. classify geographical data;</li> <li>4. describe the world in spatial terms; and</li> <li>5. describe processes that shape Earth.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. explain the branches and responsibilities of government; and</li> <li>2. explain rights and responsibilities of citizens as stated in the U.S. Constitution.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. apply economic concepts;</li> <li>2. explain how individuals, households, businesses, and governments are dependent on each other; and</li> <li>3. demonstrate an understanding of the economic outcomes of decisions made by individuals, households, businesses, and governments.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. identify and describe key historical people, events, and documents;</li> <li>2. apply an understanding of historical perspective, time, and chronology;</li> <li>3. interpret primary and secondary sources; and</li> <li>4. explain the importance of major scientific and technological advancements.</li> </ol>
<b>Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. recognize major geographic features on maps and globes;</li> <li>2. define geographic vocabulary;</li> <li>3. describe the connection between people and the environment;</li> <li>4. interpret geographical data;</li> <li>5. define the world in spatial terms; and</li> <li>6. define processes that shape Earth.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. identify branches and major responsibilities of government; and</li> <li>2. list the rights and responsibilities of citizens as stated in the Bill of Rights.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. identify fundamental economic concepts and terms; and</li> <li>2. recognize that the decisions made by individuals, households, businesses, and governments result in economic outcomes.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. identify and describe some important people, events, and documents in American history;</li> </ol>

<ol style="list-style-type: none"> <li>2. demonstrate an understanding of the concepts of historical perspective and time;</li> <li>3. distinguish between primary and secondary historical sources; and</li> <li>4. describe some scientific and technological advancements.</li> </ol>
<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. identify major geographic features on maps and globes;</li> <li>2. select words that define geographic vocabulary;</li> <li>3. explain the connection between people, places, man, and the environment;</li> <li>4. identify geographical data;</li> <li>5. identify the world in spatial terms; and</li> <li>6. identify processes that shape Earth.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. recognize that the United States has a government that is divided into branches; and</li> <li>2. state that citizens have rights and responsibilities.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. identify some fundamental economic concepts and terms.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. recognize a few of the most important people, events, and documents in American history;</li> <li>2. demonstrate a limited understanding of the concepts of historical perspective and time; and</li> <li>3. identify some important scientific and technological advancements.</li> </ol>
<b>Unsatisfactory</b>
<p>Students scoring at this level have not demonstrated the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally have <i>not</i> exhibited the ability to:</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. identify major geographic features on maps and globes;</li> <li>2. select words that define geographic vocabulary;</li> <li>3. explain the connection between people, places, man, and the environment;</li> <li>4. identify geographical data;</li> <li>5. identify the world in spatial terms; and</li> <li>6. identify processes that shape Earth.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. recognize that the United States has a government that is divided into branches; and</li> <li>2. state that citizens have rights and responsibilities.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. identify some fundamental economic concepts and terms.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. recognize a few of the most important people, events, and documents in American history;</li> <li>2. demonstrate a limited understanding of the concepts of historical perspective and time; and</li> <li>3. identify some important scientific and technological advancements.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, State Board of Elementary and Secondary Education, LR 31:1536 (July 2005), amended LR 36:

**§1129. Grade 8 Achievement Level Descriptors**

A. Grade 8 English Language Arts Achievement Level Descriptors

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the following skills:</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>1. describe the more abstract themes and ideas of what they read from various genres;</li> <li>2. analyze both meaning of texts and author's purpose and support their analyses with examples;</li> <li>3. extend text information by relating it to their personal experiences and to world events; and</li> <li>4. research topics by selecting and evaluating information from a variety of sources.</li> </ol> <p>In the area of writing, students:</p>

<ol style="list-style-type: none"> <li>develop compositions that reflect analytical, critical, and/or creative thinking in response to a writing task;</li> <li>develop sharply focused central ideas through use of cohesive organization and thorough elaboration;</li> <li>demonstrate audience awareness through use of varied word choice and sentence structures and a personal style or voice that employs a wide range of strategies (e.g., analogies, anecdotes, figurative language); and</li> <li>demonstrate consistent command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the following skills.</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>show an overall understanding of what they read, including inferential and literal information;</li> <li>analyze an author's purpose and some devices authors use in composing texts;</li> <li>extend ideas by inferring, drawing conclusions, and making connections to their personal experiences; and</li> <li>research topics by selecting and analyzing information from various sources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>express analytical, critical and/or creative thinking in response to a writing task;</li> <li>develop focused central ideas through use of logical organization and elaboration that enhances the main idea;</li> <li>demonstrate audience awareness through the use of varied word choice and sentence structure and a personal style or voice that incorporates some strategies (e.g., illustrations, examples, figurative language); and</li> <li>demonstrate reasonable command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Basic</b>
<p>Students scoring at this level generally exhibit the following skills.</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>demonstrate a literal understanding of what they read, including specific aspects that reflect the overall meaning;</li> <li>identify an author's purpose for composing a text;</li> <li>extend the ideas in texts by making simple inferences; recognize and relate connections among ideas in texts by drawing conclusions; and</li> <li>research topics by selecting and using information from various sources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>demonstrate an appropriate response to a writing task;</li> <li>develop central ideas with a consistent focus, appropriate organization, and some supportive details;</li> <li>demonstrate audience awareness through use of appropriate but general language and some sentence variety; and</li> <li>make some errors in spelling, grammar, punctuation, and capitalization that interfere with communication to the reader.</li> </ol>
<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the following skills.</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>demonstrate a partial understanding of what they read;</li> <li>make a few interpretations and extensions of ideas in text;</li> <li>make limited connections between texts and their personal experiences; and</li> <li>research topics by locating some information from commonly used sources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>demonstrate a limited response to a writing task;</li> <li>develop central ideas that are vague with some evidence of organization but few or inappropriate supporting details;</li> <li>demonstrate limited awareness of audience through use of simple or inappropriate vocabulary and simple sentences; and</li> <li>demonstrate inconsistent or little command of spelling, grammar, capitalization, and punctuation.</li> </ol>
<b>Unsatisfactory</b>
<p>Students scoring at this level generally have not demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>In the areas of reading and use of resources, students at this level have not exhibited the ability to:</p> <ol style="list-style-type: none"> <li>demonstrate an understanding of what they read;</li> <li>make interpretations and extensions of ideas in texts;</li> <li>make connections from texts to personal experiences; or</li> <li>locate information in commonly used resources.</li> </ol>

<p>In the area of writing, students at this level have not exhibited the ability to:</p> <ol style="list-style-type: none"> <li>respond appropriately to a writing task;</li> <li>demonstrate a central idea with observable organization or supporting details;</li> <li>show audience awareness through the use of appropriate grade-level vocabulary and sentence structure; or</li> <li>demonstrate acceptable command of spelling, grammar, capitalization, and punctuation.</li> </ol>
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**B. Grade 8 Mathematics Achievement Level Descriptors**

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>probe examples and counterexamples in order to shape generalizations from which they can develop models,</li> <li>use number sense and geometric awareness to consider the reasonableness of an answer,</li> <li>use abstract thinking to create unique and/or alternative problem-solving techniques, and</li> <li>explain the reasoning processes underlying their conclusions.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>logically create and defend their ideas, as well as give supporting examples;</li> <li>understand the connections between fractions, percents, decimals, and other mathematical topics such as algebra and functions;</li> <li>thoroughly understand basic-level arithmetic operations in order to problem solve in practical situations;</li> <li>use quantity and spatial relationships in problem solving and reasoning;</li> <li>convey underlying reasoning skills beyond the level of arithmetic;</li> <li>compare and contrast mathematical ideas and generate their own examples;</li> <li>apply properties of informal geometry;</li> <li>accurately use the tools of technology; and</li> <li>understand the process of gathering and organizing data and be able to make inferences, calculate, evaluate, and communicate results within the domain of statistics and probability.</li> </ol>
<b>Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>complete problems correctly with the help of prompts such as diagrams, charts, and graphs;</li> <li>solve routine, real-world problems through the appropriate selection and use of strategies and technological tools—including calculators and geometric shapes;</li> <li>use fundamental algebraic and informal geometric concepts in problem solving;</li> <li>determine which of available data are necessary and sufficient for correct solutions and use them in problem solving; and</li> <li>show limited skill in communicating mathematically.</li> </ol>
<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>complete problems correctly with the help of prompts such as diagrams, charts and graphs;</li> <li>solve one-step problems involving basic computation (+, −, ×, ÷) and follow procedural steps with instructional assistance;</li> <li>recognize basic geometric figures;</li> <li>recognize simple, obvious patterns;</li> <li>use the tools of technology;</li> <li>apply conceptual knowledge inconsistently; and</li> <li>demonstrate difficulty in transferring knowledge and skills to problem-solving situations.</li> </ol>
<b>Unsatisfactory</b>
<p>Students scoring at this level generally have not demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally have <i>not</i> exhibited the ability to:</p> <ol style="list-style-type: none"> <li>complete problems correctly with the help of prompts such as diagrams, charts, and graphs;</li> <li>solve one-step problems involving basic computation (+, −, ×, ÷) and follow procedural steps with instructional assistance;</li> <li>recognize basic geometric figures;</li> <li>recognize simple, obvious patterns;</li> <li>use the tools of technology;</li> </ol>

6. apply conceptual knowledge on a limited basis; and
7. transfer knowledge and skills to problem-solving situations.

### C. Grade 8 Science Achievement Level Descriptors

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. use abstract concepts/theories to explain everyday situations,</li> <li>2. describe many elements of a system and explain the limits of a particular example,</li> <li>3. design complex models, and</li> <li>4. demonstrate an understanding of the nature and limits of science and understand that science is subject to change.</li> </ol> <p>When given a problem, students at this level can design a simple investigation by:</p> <ol style="list-style-type: none"> <li>1. asking appropriate questions and identifying those questions that are testable and not testable;</li> <li>2. manipulating variables;</li> <li>3. using mathematics and appropriate tools to gather, analyze, and interpret data;</li> <li>4. relating several variables to explain phenomena; and</li> <li>5. developing descriptions, explanations, and appropriate displays to communicate and defend data.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. understand complex concepts/theories and communicate them,</li> <li>2. demonstrate an understanding of elements of the system,</li> <li>3. demonstrate understanding of models and diagrams, and</li> <li>4. recognize various limits of science and its changes.</li> </ol> <p>When given a problem, students at this level can:</p> <ol style="list-style-type: none"> <li>1. use a simple investigation, design an experiment, and link ideas while collecting data;</li> <li>2. use mathematics and appropriate tools to design methods of display for data; and</li> <li>3. draw conclusions from data.</li> </ol>
<b>Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. possess a fundamental knowledge of some theories and concepts;</li> <li>2. identify elements of a system and state one limiting factor when given a particular example;</li> <li>3. identify a simple model;</li> <li>4. begin to understand the nature of science; and</li> <li>5. show an awareness that science is subject to change.</li> </ol> <p>When given a problem, students at this level can:</p> <ol style="list-style-type: none"> <li>1. design a simple investigation by asking appropriate questions;</li> <li>2. identify the important variables and select appropriate tools to gather data; and</li> <li>3. interpret basic data and communicate a conclusion.</li> </ol>
<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. identify related elements of a system;</li> <li>2. identify elements of a simple model; and</li> <li>3. show some awareness that science is developing and changing.</li> </ol> <p>When given an investigation, students at this level can:</p> <ol style="list-style-type: none"> <li>1. answer specific scientific questions;</li> <li>2. identify at least one variable in an experiment; and</li> <li>3. seek and identify basic scientific data and communicate it.</li> </ol>
<b>Unsatisfactory</b>
<p>Students scoring at this level have not demonstrated the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally have <i>not</i> exhibited the ability to:</p> <ol style="list-style-type: none"> <li>1. identify related elements of a system;</li> <li>2. identify elements of a simple model; and</li> <li>3. show some awareness that science is developing and changing.</li> </ol> <p>When given an investigation, students at this level did <i>not</i> exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. answer specific scientific questions;</li> <li>2. identify at least one variable in an experiment; and</li> <li>3. seek and identify basic scientific data and communicate it.</li> </ol>

### D. Grade 8 Social Studies Achievement Level Descriptors

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the ability to</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. apply extensive geographic knowledge, analytical concepts, and vocabulary;</li> <li>2. analyze a variety of maps with a variety of scales and show the relationship between them;</li> <li>3. use case studies for spatial analysis to develop maps and other graphics;</li> <li>4. differentiate between patterns of climate, vegetation, and population across Earth's surface and explain how regions change over time; and</li> <li>5. profile regions by using geographical concepts, tools, and skills.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. evaluate the importance of rules and laws, political parties, campaigns, and elections in the American political systems;</li> <li>2. weigh the impact of American ideas and actions on the world; and</li> <li>3. compare and contrast positions relating to the rights of citizens.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. apply fundamental economic concepts,</li> <li>2. analyze the role of governmental policies in competitive markets, and</li> <li>3. examine the reasons for worldwide interdependence based on historical and economic factors.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. evaluate historical patterns as they relate to specific events,</li> <li>2. make generalizations about historical topics using a variety of sources, and</li> <li>3. develop an awareness of the political, social, and economic themes in history.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. analyze a wide variety of physical and cultural features;</li> <li>2. apply a fundamental geographic vocabulary;</li> <li>3. compare information presented in different scales;</li> <li>4. use geographic tools to translate information into patterns;</li> <li>5. evaluate how human activity affects the environment;</li> <li>6. interpret various patterns of trade and migration; and</li> <li>7. solve location questions by integrating two or more sources.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. compare and contrast the relationship between state and federal constitutions;</li> <li>2. analyze the ways in which political and social conflict can be peacefully resolved;</li> <li>3. interpret the impact of U.S. foreign policy on the world; and</li> <li>4. analyze ways in which citizens help to shape politics and government at various levels.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. apply fundamental economic concepts;</li> <li>2. apply the meaning of economic indicators and their role in economics;</li> <li>3. analyze various economic systems and their historical impact; and</li> <li>4. evaluate the opportunity cost of economic decisions.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. recognize historical connections between people and events;</li> <li>2. distinguish between primary and secondary sources;</li> <li>3. incorporate geographic, technological, and other reference material; and</li> <li>4. communicate ideas about historical themes with supporting evidence.</li> </ol>

**Basic**

Students scoring at this level generally exhibit the ability to:

Geography:

1. utilize vocabulary of geographic concepts relating to patterns, relationships, distance, direction, and location;
2. use latitude and longitude to locate places;
3. identify continents, oceans, or selected countries and cities;
4. explain the differences between maps/globes, read map scales and use an atlas/almanac;
5. illustrate relationships that exist between the physical environment and human activity;
6. identify the distinguishing characteristics of a region; and
7. describe the movement of people, goods, services, and ideas.

Civics:

1. explain the major purposes of government;
2. identify and explain the importance of basic principles of American constitutional democracy;
3. describe major foreign policy of the U.S.; and
4. describe the requirements of citizenship and naturalization in the U.S.

Economics:

1. compare basic concepts related to economics;
2. explain the causes and consequences of economic decision making;
3. distinguish how specialization, skills, and knowledge affect the economic process;
4. compare various economic systems and their historical impacts; and
5. explain the role of supply and demand on production and distribution of goods and services.

History:

1. identify and categorize people, places, events, and documents in historical context;
2. understand the impact of diverse cultures on American life;
3. explain the significance of major historical events; and
4. explain the fundamental political ideas and institutions of American life.

**Approaching Basic**

Students scoring at this level generally exhibit the ability to

Geography:

1. obtain information from geographic models;
2. draw a variety of maps;
3. memorize various geographic data; and
4. recognize that human activity is affected by the environment.

Civics:

1. recognize types of government;
2. identify the basic principles of American constitutional democracy;
3. recognize a foreign policy issue; and
4. list the rights and responsibilities of American citizens.

Economics:

1. identify basic concepts and vocabulary terms related to economics; and
2. discuss how supply and demand affects the price of goods and services.

History:

1. identify historical people and places;
2. develop an awareness of diverse cultures in America;
3. name a variety of historical events;
4. recognize the fundamental political ideas and institutions of American life.

**Unsatisfactory**

Students scoring at this level have *not* demonstrated the fundamental knowledge and skills needed for the next level of schooling. Students scoring at this level generally have not exhibited the ability to

Geography:

1. obtain information from geographic models;
2. draw a variety of maps;
3. memorize various geographic data; and
4. recognize that human activity is affected by the environment.

Civics:

1. recognize types of government;
2. identify the basic principles of American constitutional democracy;
3. recognize a foreign policy issue; and
4. list the rights and responsibilities of American citizens.

Economics:

1. identify basic concepts and vocabulary terms related to economics; and
2. discuss how supply and demand affects the price of goods and services.

History:

1. identify historical people and places;
2. develop an awareness of diverse cultures in America;
3. name a variety of historical events; and
4. recognize the fundamental political ideas and institutions of American life.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4 (A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1540 (July 2005), amended LR 36:

**Subchapter D. LEAP Assessment Structure §1151. Retests and Rescores**

A. ...

B. Rescores

1. The district test coordinator must file a request with the scoring contractor within 20 working days from the date the district receives the individual student scores. All requests must be made on or before the deadline date identified by the testing contractor and the LDE. Requests received after the deadline will not be honored.

2. Only rescoring of tests from the most recent administration may be requested.

3. All requests for rescoring require a fee, which is established by and paid to the scoring contractor.

4. Students may request a rescore at specified achievement levels scaled score ranges and subject area of LEAP tests if the following criterion are met, the rescore will be expedited.

a. English Language Arts and Mathematics—grades 4 and 8. The test has a scaled score five points below the Basic or Approaching Basic achievement level.

b. English Language Arts and Mathematics—Grade 8. The test has a scaled score five points below the Approaching Basic achievement level.

C. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4.

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1547 (July 2005), amended LR 32:236 (February 2006).

**Chapter 13. Graduation Exit Examination Subchapter C. GEE Achievement Level Descriptors §1325. Grade 10 Achievement Level Descriptors**

A. Grade 10 English Language Arts Achievement Level Descriptors

**Advanced**

Students scoring at this level generally exhibit the following skills:

In the areas of reading and use of resources, students:

1. demonstrate thorough understanding of what they read and describe abstract themes and ideas;
2. analyze texts for meaning and form and support their analyses with specific examples;
3. extend ideas in texts by relating their experiences and to the world; and
4. research topics by selecting and evaluating information from various sources.

In the area of writing, students

1. express analytical, critical, and/or creative thinking in response to a writing task;
2. develop effective responses that demonstrate sharply focused

<p>central ideas, cohesive organization, and elaboration with illustrative, supporting details;</p> <ol style="list-style-type: none"> <li>demonstrate audience awareness through the use of rich vocabulary and a clear personal style or voice; and</li> <li>demonstrate consistent command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the following skills:</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>demonstrate overall understanding of what they read including inferential and literal information;</li> <li>analyze an author's use of literary devices;</li> <li>extend ideas in texts by making inferences, drawing conclusions, and making clear connections to personal experiences and other readings; and</li> <li>research topics by selecting and analyzing information from various sources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>express critical, analytical, and/or creative thinking in response to a writing task;</li> <li>develop effective responses with focused central ideas, logical organization, and convincing elaboration;</li> <li>demonstrate awareness of the intended audience through use of varied word choice (vocabulary) and sentence structure; and</li> <li>demonstrate reasonable command of spelling, grammar, punctuation, and capitalization</li> </ol>
<b>Basic</b>
<p>Students scoring at this level generally exhibit the following skills:</p> <p>In the areas of reading and use of resources, students:</p> <ol style="list-style-type: none"> <li>demonstrate overall understanding of what they read and make some interpretations;</li> <li>identify elements of texts and an author's style;</li> <li>extend ideas in texts by making simple inferences and some, connections to personal experiences; and</li> <li>research topics by selecting and using information in various sources.</li> </ol> <p>In the area of writing, students:</p> <ol style="list-style-type: none"> <li>demonstrate some evidence of critical, analytical, and/or creative thinking in response to a writing task;</li> <li>develop responses with central ideas, evidence of conscious organization, and some supporting details;</li> <li>demonstrate audience awareness through a sense of personal style or voice and some variety in vocabulary and sentence structure; and</li> <li>make some errors in spelling, grammar, punctuation, and capitalization that interfere with communication to the reader.</li> </ol>
<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the following skills:</p> <p>In the areas of reading and use of resources, students</p> <ol style="list-style-type: none"> <li>demonstrate a partial understanding of what they read;</li> <li>identify some elements of an author's style;</li> <li>make simple or broad connections between texts and their personal experiences; and</li> <li>research topics by locating information in commonly used sources.</li> </ol> <p>In the area of writing, students</p> <ol style="list-style-type: none"> <li>demonstrate a limited responses to a writing task;</li> <li>develop responses with unfocused central ideas, and minimal elaboration or supporting details;</li> <li>demonstrate limited audience awareness through use of weak personal style or voice, simple or inappropriate vocabulary, and simple sentences; and</li> <li>demonstrate inconsistent or little command of spelling, grammar, capitalization, and punctuation.</li> </ol>
<b>Unsatisfactory</b>
<p>Students scoring at this level generally have not demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>In the areas of reading and use of resources, students at this level have not exhibited the ability to:</p> <ol style="list-style-type: none"> <li>demonstrate an understanding of what they read;</li> <li>identify simple elements of an author's style;</li> <li>make connections between ideas in texts and personal experiences; or</li> <li>research topics by locating information in commonly used sources.</li> </ol> <p>In the area of writing, students at this level have not exhibited the ability to:</p>

<ol style="list-style-type: none"> <li>express ideas in response to a writing task;</li> <li>develop a central idea with focus, observable organization, or sufficient elaboration;</li> <li>show audience awareness through the use of appropriate vocabulary and varied sentence structure; or</li> <li>demonstrate acceptable command of spelling, grammar, capitalization, and punctuation.</li> </ol>
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**B. Grade 10 Mathematics Achievement Level Descriptors**

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>understand the function concept and are able to communicate and apply the numeric, algebraic, and graphical properties of functions;</li> <li>apply their knowledge of algebra, geometry, and statistics to solve problems in more advanced areas of continuous and discrete mathematics;</li> <li>formulate generalizations and create models through probing examples and counter examples; and</li> <li>communicate their mathematical reasoning through the clear, concise, and correct use of mathematical symbolism and logical thinking.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>demonstrate an understanding of algebraic, statistical, geometric, and spatial reasoning;</li> <li>simplify algebraic expressions; justify geometric relationships; and judge and defend the reasonableness of answers as applied to real-world situations;</li> <li>analyze and interpret data in various forms;</li> <li>understand and use elements of the linear function concept in symbolic, graphical, and tabular form; and</li> <li>make conjectures, defend ideas, and give supporting examples.</li> </ol>
<b>Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>use estimation to verify solutions and determine the reasonableness of results as applied to routine real-world problems;</li> <li>use algebraic and geometric reasoning strategies to solve problems;</li> <li>recognize relationships presented in verbal, algebraic, tabular, and graphical forms;</li> <li>demonstrate knowledge of geometric relationships and corresponding measurement skills;</li> <li>apply statistical reasoning in the organization and display of data and in reading tables and graphs;</li> <li>use correct mathematical language and symbols to communicate mathematical relationships and reasoning processes; and</li> <li>use calculators appropriately to solve problems.</li> </ol>
<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>use estimation and measurement to verify solutions and determine the reasonableness of results as applied to routine real-world problems;</li> <li>show limited use of fundamental algebraic, geometric, and statistical reasoning in problem solving;</li> <li>interpret data presented in various forms;</li> <li>show limited skills in communicating mathematically; and</li> <li>demonstrate limited application of conceptual knowledge.</li> </ol>
<b>Unsatisfactory</b>
<p>Students scoring at this level have not demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level have generally have <i>not</i> exhibited the ability to:</p> <ol style="list-style-type: none"> <li>use estimation and measurement to verify solutions and determine the reasonableness of results as applied to routine real-world problems;</li> <li>use fundamental algebraic, geometric, and statistical reasoning in problem solving;</li> <li>interpret data presented in various forms;</li> <li>communicate mathematically; and</li> <li>apply conceptual knowledge.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:4 (A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1548 (July 2005), amended LR 36:

**§1327. Grade 11 Achievement Level Descriptors**

**A. Grade 11 Science Achievement Level Descriptors**

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. have a qualitative and quantitative grasp of scientific principles, relating them to one another and to other phenomena, and being aware of their development and limitations;</li> <li>2. formulate scientific questions, compare experimental designs, and devise valid experiments to answer their questions;</li> <li>3. collect the relevant quantitative and qualitative data using appropriate instrumentation;</li> <li>4. provide a scientifically valid interpretation of the data they collect;</li> <li>5. engage in self assessment, discard unnecessary data, and recognize gaps in information;</li> <li>6. locate needed information in primary or secondary sources; and</li> <li>7. communicate their ideas by interpolating, extrapolating, and interpreting patterns of change in graphic and symbolic representations.</li> </ol> <p>With inquiry as the core, students at the <i>Advanced</i> level demonstrate an understanding that unifying concepts and processes can be applied throughout the science disciplines—physical, life, earth/space, and the environmental sciences.</p>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. grasp scientific principles on both a qualitative and quantitative basis,</li> <li>2. understand that scientific knowledge is tentative and subject to change,</li> <li>3. identify more than one way to solve a given problem and select the method with the most promise,</li> <li>4. manipulate data through various mathematical models,</li> <li>5. integrate several abstract facts in order to understand overarching scientific principles, and</li> <li>6. apply those principles to human activities.</li> </ol> <p>With inquiry as the core, students at the <i>Mastery</i> level will identify unifying concepts and processes among the science disciplines—physical, life, earth/space, and the environmental sciences.</p>
<b>Basic</b>
<p>Students scoring at this level generally exhibit the ability to</p> <ol style="list-style-type: none"> <li>1. formulate valid hypotheses;</li> <li>2. design a simple experiment;</li> <li>3. draw appropriate conclusions;</li> <li>4. develop inferences from experimentation and apply that information to new situations;</li> <li>5. distinguish scientific principles from pseudoscience; and</li> <li>6. apply scientific principles to their everyday lives.</li> </ol> <p>With inquiry as the core, students at the <i>Basic</i> level begin to identify unifying concepts and processes among the science disciplines—physical, life, earth/space, and the environmental sciences.</p>
<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. know and understand fundamental science facts and concepts concerning the world; and</li> <li>2. conduct a simple experiment that includes making observations; forming a reasonable hypothesis; identifying variables; collecting, displaying, and interpreting data; and drawing conclusions.</li> </ol> <p>These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.</p>

<b>Unsatisfactory</b>
<p>Students scoring at this level have not demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally have <i>not</i> exhibited the ability to:</p> <ol style="list-style-type: none"> <li>1. know and understand fundamental science facts and concepts concerning the world; and</li> <li>2. conduct a simple experiment that includes making observations; forming a reasonable hypothesis; identifying variables; collecting, displaying, and interpreting data; and drawing conclusions.</li> </ol> <p>These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.</p>

**B. Grade 11 Social Studies Achievement Level Descriptors**

<b>Advanced</b>
<p>Students scoring at this level generally exhibit the ability to</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. organize geographical data;</li> <li>2. analyze the physical structure of the planet; and</li> <li>3. evaluate the spatial relationship between humans and their environment.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. compare and contrast structure and purpose of government;</li> <li>2. interpret and evaluate foundations of the American political system;</li> <li>3. analyze international relationships; and</li> <li>4. evaluate the roles of citizens.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. apply fundamental economic concepts;</li> <li>2. evaluate decisions made by consumers; and</li> <li>3. evaluate U.S. fiscal and monetary policies.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. analyze continuity and change;</li> <li>2. analyze the people, places, events, ideas, and documents;</li> <li>3. evaluate relevant experiences from the past to critique understanding of contemporary issues; and</li> <li>4. evaluate the role of evidence in making an historical argument.</li> </ol>
<b>Mastery</b>
<p>Students scoring at this level generally exhibit the ability to</p> <p><b>Geography:</b></p> <ol style="list-style-type: none"> <li>1. classify geographical data;</li> <li>2. examine the physical structure of the planet; and</li> <li>3. compare spatial relationships between humans and their environment.</li> </ol> <p><b>Civics:</b></p> <ol style="list-style-type: none"> <li>1. examine the structure and purpose of government;</li> <li>2. discuss the foundation of the American political system;</li> <li>3. interpret international relationships; and</li> <li>4. examine the roles of citizens.</li> </ol> <p><b>Economics:</b></p> <ol style="list-style-type: none"> <li>1. analyze fundamental economic concepts;</li> <li>2. discuss decisions made by consumers, businesses, and government; and</li> <li>3. analyze U.S. fiscal and monetary policies.</li> </ol> <p><b>History:</b></p> <ol style="list-style-type: none"> <li>1. examine the role of continuity and of change in history;</li> <li>2. examine the significance of people, places, events, ideas, and documents in history;</li> <li>3. analyze relevant experience from the past to understanding of contemporary issues; and</li> <li>4. analyze the role of evidence in making an historical argument.</li> </ol>

<b>Basic</b>
<p>Students scoring at this level generally exhibit the ability to</p> <p>Geography:</p> <ol style="list-style-type: none"> <li>1. interpret geographical data;</li> <li>2. describe the basic physical structure of the planet; and</li> <li>3. explain the spatial relationships between humans and their environment.</li> </ol> <p>Civics:</p> <ol style="list-style-type: none"> <li>1. explain structure and purposes of government;</li> <li>2. describe the foundations of the American political system;</li> <li>3. explain international relationships; and</li> <li>4. discuss the roles of citizens.</li> </ol> <p>Economics:</p> <ol style="list-style-type: none"> <li>1. discuss fundamental economic concepts;</li> <li>2. explain decisions made by consumers, businesses, and government; and</li> <li>3. explain U.S. fiscal policy.</li> </ol> <p>History:</p> <ol style="list-style-type: none"> <li>1. describe continuity and change;</li> <li>2. describe the significance of people, places, events, ideas, and documents;</li> <li>3. examine relevant experiences from the past to contemporary issues; and</li> <li>4. explain the role of evidence in making an historical argument.</li> </ol>
<b>Approaching Basic</b>
<p>Students scoring at this level generally exhibit the ability to</p> <p>Geography:</p> <ol style="list-style-type: none"> <li>1. identify geographical data;</li> <li>2. recognize the physical structure of the planet; and</li> <li>3. state the spatial relationships between humans and their environment.</li> </ol> <p>Civics:</p> <ol style="list-style-type: none"> <li>1. identify the structure and purposes of government;</li> <li>2. recognize the foundations of the American political system;</li> <li>3. identify international relationships; and</li> <li>4. identify the roles of citizens.</li> </ol> <p>Economics:</p> <ol style="list-style-type: none"> <li>1. identify fundamental economic concepts;</li> <li>2. identify decisions made by consumers, businesses, and government; and</li> <li>3. identify U.S. fiscal and monetary policies.</li> </ol> <p>History:</p> <ol style="list-style-type: none"> <li>1. recognize continuity and change;</li> <li>2. recognize the significance of people, places, events, ideas, and documents;</li> <li>3. identify relevant experiences from the past to describe contemporary issues; and</li> <li>4. recognize the role of evidence in making an historical argument.</li> </ol>
<b>Unsatisfactory</b>
<p>Students scoring at this level have not demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally have <i>not</i> exhibited the ability to</p> <p>Geography:</p> <ol style="list-style-type: none"> <li>1. identify geographical data;</li> <li>2. recognize the physical structure of the planet; and</li> <li>3. state the spatial relationships between humans and their environment.</li> </ol> <p>Civics:</p> <ol style="list-style-type: none"> <li>1. identify the structure and purposes of government;</li> <li>2. recognize the foundations of the American political system;</li> <li>3. identify international relationships; and</li> <li>4. identify the roles of citizens.</li> </ol> <p>Economics:</p> <ol style="list-style-type: none"> <li>1. identify fundamental economic concepts;</li> <li>2. identify decisions made by consumers, businesses, and government; and</li> <li>3. identify U.S. fiscal and monetary policies.</li> </ol> <p>History:</p> <ol style="list-style-type: none"> <li>1. recognize continuity and change;</li> <li>2. recognize the significance of people, places, events, ideas, and documents;</li> <li>3. identify relevant experiences from the past to describe contemporary issues; and</li> <li>4. recognize the role of evidence in making an historical argument.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4 and R.S. 17:391.4 (A).

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 31:1550 (July 2005), amended LR 36:

**Subchapter D. GEE Assessment Structure §1349. Rescores**

A. The district test coordinator must file a request with the scoring contractor within 20 working days from the date the school district receives the individual student scores. All requests must be made on or before the deadline date identified by the testing contractor and the LDE. Requests received after the deadline will not be honored.

B. Only rescores of tests from the most recent administration may be requested.

C. All requests for rescoring require a fee, which is established by and paid to the scoring contractor.

D. Students may request a rescore of their GEE tests at specified achievement levels and scaled score ranges. If the following criteria are met, the rescore will be expedited.

1. English Language Arts and Mathematics. The test has a scaled score five points below the Approaching Basic achievement level.

2. Science and Social Studies. The test has a scaled score five points below the Approaching Basic achievement level.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 31:1554 (July 2005), amended LR 32:237 (February 2006), LR 36:

**Chapter 18. End-of-Course Tests Subchapter B. General Provisions §1803. Introduction**

A. – D. ....

E. EOC retests will not be offered until 2010-2011.

F. Since these tests are being developed for use in Louisiana schools, any school selected for field tests shall participate in the field tests. In spring, 2010, the biology field tests will be administered.

G. - G.4. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:214 (February 2009), amended LR 36:

**Subchapter F. EOCT Administrative Rules §1819. Double Jeopardy Rule**

A. If a school administers an EOC test that the student has already passed and the student scores needs improvement on the retest, the passing score will be used to determine the student's eligibility for a standard high school diploma.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

**§1821. First Cohort**

A. The first cohort comprises students who were first-time ninth graders in 2010–2011 and all first-time ninth graders thereafter. First cohort students are required to score Fair or above on EOC English II or English III, Algebra I or Geometry, and Biology or American History to be eligible for a standard high school diploma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

**§1823. Rescores**

A. The district test coordinator must file a request with the scoring contractor within 20 working days from the date the school district receives the individual student scores. All requests must be made on or before the deadline date identified by the testing contractor and the LDE. Requests received after the deadline will not be honored.

B. Only rescores of tests from the most recent administration may be requested.

C. All requests for rescoring require a fee, which is established by and paid to the scoring contractor.

D. Students may request a rescore of their EOC tests at specified achievement levels and scaled score ranges. If the following criteria is met, the rescore will be expedited:

1. The test has a scaled score five points below the Fair achievement level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

**§1825. EOC Administration Rules**

A. Students enrolled in EOC courses shall take the EOC test for that course at the conclusion of the course.

B. If a district holds “graduation” prior to the release of test scores, the LEA must have in place a policy for graduation without the test scores.

C. There is no ending age limit for students to retake the EOC, nor is there a limit on the number of times the student may retake the test. Students who no longer reside in the school district where he/she completed Carnegie units may test in the current school district of residence. The DTC shall forward the passing test scores to the high school where the Carnegie units reside.

D. If a student was issued a GED diploma and subsequently meets the requirements for the EOC, the student may surrender the GED diploma and be issued a standard high school diploma.

E. When administrative errors are made in testing, the state superintendent of education may determine how to remedy the error.

F. Seniors who have completed all EOC tests required for a standard high school diploma and who wish to retake for the Louisiana high school diploma endorsements may retake during the fall retest administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

**§1827. EOC Retest Administration**

A. Students who did not score Fair or above on an EOC test may retake in the next EOC administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

**§1829. EOC Transfer Rules**

A. The following rules apply for transfer students who are Louisiana residents transferring into the Louisiana public school district from out-of-state schools, nonpublic schools, or approved home study programs.

1. Students who completed courses for Carnegie units and earned the Carnegie units are not required to take the EOC test.

2. Students who completed courses for Carnegie credit and did not earn the Carnegie units shall be required to take the EOC test for those courses only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

**Chapter 20. LEAP Alternate Assessment, Level 2  
Subchapter D. Achievement Level Descriptors  
§2011. Grade 4 Achievement Level Descriptors**

A. Grade 4 English Language Arts Achievement Level Descriptors

<b>Basic</b>
***
Students scoring at this level generally exhibit the ability to
***
6. develop a central idea with some observable organization and elaboration with a few supporting details,
7. demonstrate audience awareness through use of general vocabulary, some sentence variety, and some evidence of personal style or voice, and
8. demonstrate some command of spelling, grammar, punctuation, and capitalization.
<b>Approaching Basic</b>
***
Students scoring at this level generally exhibit the ability to
***
6. develop a response with a vague or weak central idea, weak organization, and few or inappropriate details,
7. demonstrate limited audience awareness through use of simple or inappropriate vocabulary, simple sentences, and little to no evidence of personal style or voice, and
8. demonstrate limited command of spelling, grammar, punctuation, and capitalization.
<b>Foundational</b>
***
Students scoring at this level generally exhibit the ability to
***
5. develop a response to a writing task using a weak or unfocused central idea, attempted organization, and little or irrelevant support,
6. show minimal audience awareness through use of simple or inappropriate vocabulary, simple sentences, and weak personal style or voice, and
7. demonstrate minimal command of spelling, grammar, punctuation, and capitalization.
<b>Pre-Foundational</b>
***
Students scoring at this level <i>need to develop</i> the ability to
1. demonstrate at least minimal understanding of what they read,
2. make at least minimal connections between ideas in text and personal experiences,
***
4. develop a response to a writing task with some evidence of a central idea, attempted organization, and some supporting details,
5. show at least minimal audience awareness through use of simple vocabulary and simple sentences, and
6. demonstrate at least minimal command of spelling, grammar, punctuation, and capitalization.

B. - D. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:271 (February 2007), amended LR 34:2558 (December 2008),

repromulgated LR 35:59 (January 2009), amended LR 35:219 (February 2009), LR 36:

**§2012. Grade 5 Achievement Level Descriptors**

**A. Grade 5 English Language Arts Achievement Level Descriptors**

<b>Basic</b>
***
Students scoring at this level generally exhibit the ability to
***
<ol style="list-style-type: none"> <li>5. express some creative and/or critical thinking in response to a writing task, characterized by a central idea, observable organization, and supporting details,</li> <li>6. demonstrate audience awareness through use of grade appropriate vocabulary, sentence variety, and evidence of personal style or voice, and</li> <li>7. demonstrate some command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Approaching Basic</b>
***
Students scoring at this level generally exhibit the ability to
***
<ol style="list-style-type: none"> <li>4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, weak organization, and few supporting details,</li> <li>5. demonstrate limited audience awareness through use of simple but appropriate vocabulary, simple sentence structures, and few elements of personal style, and</li> <li>6. demonstrate limited command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Foundational</b>
***
Students scoring at this level generally exhibit the ability to
***
<ol style="list-style-type: none"> <li>4. develop a minimal response to a writing task, characterized by a weak central idea, little observable organization, and few supporting details,</li> <li>5. demonstrate minimal audience awareness through the use of limited vocabulary, simple sentence structures, and little or no personal style or voice, and</li> <li>6. demonstrate minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Pre-Foundational</b>
***
Students scoring at this level <i>need to develop</i> the ability to
***
<ol style="list-style-type: none"> <li>4. develop at least a minimal a minimal response to a writing task, characterized by a weak central idea, little observable organization, and few supporting details,</li> <li>5. demonstrate at least minimal audience awareness through the use of limited vocabulary, simple sentence structures, and little or no personal style or voice, and</li> <li>6. demonstrate at least minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>

B. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:2033 (October 2007), amended LR 36:

**§2013. Grade 6 Achievement Level Descriptors**

**A. Grade 6 English Language Arts Achievement Level Descriptors**

<b>Basic</b>
***
Students scoring at this level generally exhibit the ability to
***
<ol style="list-style-type: none"> <li>4. express some creative and/or critical thinking in response to a writing task, characterized by a central idea, observable organization, and supporting details,</li> <li>5. demonstrate audience awareness through use of grade-appropriate vocabulary, a variety of sentence structures, and evidence of personal style or voice, and</li> <li>6. demonstrate some command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Approaching Basic</b>
***
Students scoring at this level generally exhibit the ability to
***
<ol style="list-style-type: none"> <li>4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, some evidence of organization, few transitions, and few supporting details,</li> <li>5. demonstrate limited audience awareness through use of simple but appropriate vocabulary, simple sentence structures, and few elements of personal style, and</li> <li>6. demonstrate limited command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Foundational</b>
***
Students scoring at this level generally exhibit the ability to
***
<ol style="list-style-type: none"> <li>4. construct a minimal response to a writing task, characterized by a weak central idea, little observable organization, and a few supporting details,</li> <li>5. demonstrate minimal audience awareness through the use of limited vocabulary, simple sentences, and limited evidence of elements of personal style or voice, and</li> <li>6. demonstrate minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Pre-Foundational</b>
***
Students scoring at this level <i>need to develop</i> the ability to
***
<ol style="list-style-type: none"> <li>4. construct at least a minimal response to a writing task, characterized by a weak central idea, little observable organization, and a few supporting details,</li> <li>5. demonstrate at least minimal audience awareness through the use of limited vocabulary, simple sentences, and limited evidence of elements of personal style or voice, and</li> <li>6. demonstrate at least minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>

B. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:2036 (October 2007), amended LR 36:

**§2014. Grade 7 Achievement Level Descriptors**

**A. Grade 7 English Language Arts Achievement Level Descriptors**

<b>Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>6. develop an appropriate response to a writing task, characterized by a central idea, observable organization, simple transitions, and supporting details,</li> <li>7. demonstrate audience awareness through use of grade-appropriate vocabulary, sentence variety, and evidence of personal style or voice, and</li> <li>8. demonstrate some command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Approaching Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, weak organization, and few supporting details,</li> <li>5. demonstrate limited audience awareness through the use of simple vocabulary, simple sentences, and few elements of personal style, and</li> <li>6. demonstrate limited command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Foundational</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>4. construct a minimal response to a writing task, characterized by a weak central idea, some observable organization, and some supporting information,</li> <li>5. demonstrate minimal audience awareness through use of simple vocabulary, simple sentences, and little or no personal style or voice, and</li> <li>6. demonstrate minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Pre-Foundational</b> ***
Students scoring at this level <i>need to develop</i> the ability to ***
<ol style="list-style-type: none"> <li>4. construct at least a minimal response to a writing task, characterized by a weak central idea, some observable organization, and some supporting information,</li> <li>5. demonstrate at least minimal audience awareness through the use of simple vocabulary, simple sentences, and little or no personal style or voice, and</li> <li>6. demonstrate at least minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>

B. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:2036 (October 2007), amended LR 36:

**§2015. Grade 8 Achievement Level Descriptors**

**A. Grade 8 English Language Arts Achievement Level Descriptors**

<b>Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>6. develop a central idea with a consistent focus, appropriate organization, and elaboration with some supporting details,</li> <li>7. demonstrate audience awareness through use of appropriate but general language, and some sentence variety, and a sense of personal style, and</li> <li>8. demonstrate some command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Approaching Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>6. develop a weak central idea with some evidence of organization and elaboration with few or inappropriate supporting details,</li> <li>7. demonstrate limited awareness of audience through use of simple or inappropriate vocabulary and simple sentences, and</li> <li>8. demonstrate limited command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Foundational</b> ***
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> <li>1. demonstrate minimal understanding of what they read;</li> <li>2. make minimal interpretations and extensions of ideas in the texts;</li> <li>3. make minimal connections between the text and personal experiences;</li> <li>4. research-a topic by locating minimal information-in commonly used sources;</li> <li>5. demonstrate a minimal response to a writing task;</li> <li>6. develop a response to a writing task with a weak or unfocused idea, attempted organization, and little or irrelevant support;</li> <li>7. show minimal audience awareness through use of simple or inappropriate vocabulary and simple sentences; and</li> <li>8. demonstrate minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Pre-Foundational</b> ***
Students scoring at this level need to develop the ability to: ***
<ol style="list-style-type: none"> <li>1. make at least minimal interpretations and extensions of ideas in the text,</li> <li>4. develop a response to a writing task with some evidence of a central idea, attempted organization, and some supporting details,</li> <li>5. show at least minimal audience awareness through use of simple vocabulary and simple sentences, and</li> <li>6. demonstrate at least minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>

B. – D. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:272 (February 2007), amended LR 33:2037 (October 2007), LR 34:2555 (December 2008), repromulgated LR 35:60 (January 2009), amended LR 36:

**§2016. Grade 9 Achievement Level Descriptors**

**A. Grade 9 English Language Arts Achievement Level Descriptors**

<b>Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>6. construct an appropriate multiparagraph response to a writing task, characterized by a central idea, observable organization, simple transitions, and supporting information,</li> <li>7. demonstrate audience awareness through intentional use of appropriate vocabulary, sentence variety, and personal style or voice, and</li> <li>8. demonstrate some command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Approaching Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, some evidence of organization and transitions, and few supporting details,</li> <li>5. demonstrate limited audience awareness through the use of simple vocabulary, simple sentence structures, and few elements of personal style, and</li> <li>6. demonstrate limited command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Foundational</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>4. develop a minimal response to a writing task, characterized by a weak central idea, limited observable organization, and some supporting information,</li> <li>5. demonstrate minimal audience awareness in written responses through the use of simple vocabulary, simple sentences, and little or no personal style or voice, and</li> <li>6. demonstrate minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Pre-Foundational</b> ***
Students scoring at this level need to develop the ability to ***
<ol style="list-style-type: none"> <li>4. develop at least a minimal response to a writing task, characterized by a weak central idea, limited observable organization, and some supporting information,</li> <li>5. demonstrate at least minimal audience awareness in written responses through the use of simple vocabulary, simple sentences, and little to no personal style or voice, and</li> <li>6. demonstrate at least minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>

B. ...

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:2038 (October 2007), amended LR 36:

**§2017. Grade 10 Achievement Level Descriptors**

**A. Grade 10 English Language Arts Achievement Level Descriptors**

<b>Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>6. develop a response with a central idea, evidence of some observable organization, and elaboration with some supporting details,</li> </ol>

<ol style="list-style-type: none"> <li>7. demonstrate audience awareness through a sense of personal style or voice and some variety in vocabulary and sentence structure, and</li> <li>8. demonstrate some command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Approaching Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>6. develop a response with a weak central idea, some evidence of organization, and minimal elaboration or supporting details,</li> <li>7. demonstrate limited audience awareness through use of weak personal style or voice, simple or inappropriate vocabulary, and simple sentences, and</li> <li>8. demonstrate limited command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Foundational</b> ***
Students scoring at this level generally exhibit the ability to ***
<ol style="list-style-type: none"> <li>6. develop a response with a weak or unfocused idea, attempted organization, and little or irrelevant support,</li> <li>7. demonstrate minimal audience awareness through use of weak personal style or voice, simple or inappropriate vocabulary, and simple sentences, and</li> <li>8. demonstrate minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>
<b>Pre-Foundational</b> ***
Students scoring at this level <i>need to develop</i> the ability to
<ol style="list-style-type: none"> <li>2. make at least minimal connections between text and personal experiences,</li> <li>5. develop a response to a writing task using a general focus, attempted organization, and minimal support,</li> <li>6. demonstrate at least minimal audience awareness through use of simple vocabulary and simple sentences, and</li> <li>7. demonstrate at least minimal command of spelling, grammar, punctuation, and capitalization.</li> </ol>

B. - D. ...

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:273 (February 2007), amended LR 33:2040 (October 2007), LR 36:

**§2019. Grade 11 Achievement Level Descriptors**

**A. Grade 11 Science Achievement Level Descriptors**

<b>Basic</b> ***
Students scoring at this level generally exhibit the ability to ***
With inquiry as the core, students at the <i>Basic</i> level begin to identify unifying concepts and processes among the science disciplines—physical, life, earth/space, and the environmental sciences.
<b>Approaching Basic</b> ***
<b>Foundational</b> ***
<b>Pre-Foundational</b> ***

B. ...

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR

33:274 (February 2007), amended LR 33:2041 (October 2007), LR 36:

### **Subchapter E. LAA 2 Assessment Structure**

#### **§2031. Double Jeopardy Rule**

A. If a school administers a LAA 2 test that the student has already passed and the student scores below approaching basic on the retest, the passing score will be used to determine the student's eligibility for a standard high school diploma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

#### **§2033. Rescores**

A. The district test coordinator must file a request with the scoring contractor within 20 working days from the date the school district receives the individual student scores. All requests must be made on or before the deadline date identified by the testing contractor and the LDE. Requests received after the deadline will not be honored.

B. Only rescoring of tests from the most recent administration may be requested.

C. All requests for rescoring require a fee, which is established by and paid to the scoring contractor.

D. Students may request a rescore of their LAA 2 tests at specified achievement levels and scaled score ranges. If the following criteria are met, the rescore will be expedited:

1. English Language Arts and Mathematics. The test has a scaled score 10 points below the Approaching Basic achievement level.

2. Science and Social Studies. The test has a scaled score 10 points below the Approaching Basic achievement level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

#### **§2035. LAA 2 Administration Rules**

A. Students enrolled in grade 10 for the first time must take LAA 2 English Language Arts and Mathematics tests during the spring administration.

B. Students repeating grade 10 shall take the LAA 2 Science and Social Studies tests during the spring administration.

C. Students enrolled in grade 11 for the first time must take LAA 2 Science and Social Studies tests during the spring administration.

D. Students enrolled in grade 11 shall take Science and Social Studies tests unless the student was enrolled in grade 11 for two years.

E. Students promoted from grade 9 to grade 11 may take English Language Arts and Mathematics tests during the fall retest administration and then take the Science and Social Studies tests during the subsequent spring administration.

F. Students in block schedules who are classified as tenth graders in the fall of their second year and as eleventh graders by the subsequent spring test administration are permitted to take all LAA 2 content-area tests—English Language Arts, Mathematics, Science, and Social Studies—for the first time during that spring test administration.

G. If students enrolled in grade 12 have not yet met the LAA 2 requirements to be eligible for a standard high school diploma, they may take all content-area tests—English

Language Arts, Mathematics, Science, and Social Studies—during the fall retest administration.

H. If a district holds “graduation” prior to the release of spring test scores, the LEA must have in place a policy for graduation without the test scores.

I. There is no ending age limit for students to retest in LAA 2, nor is there a limit on the number of times the student may retake the test. Students who no longer reside in the school district where he/she completed Carnegie units may test in the current school district of residence. The DTC shall forward the passing test scores to the high school where the Carnegie units reside.

J. If a student was issued a GED diploma and subsequently meets the requirements of the LAA 2, the student may surrender the GED diploma and be issued a standard high school diploma.

K. When administrative errors are made in testing, the state superintendent of education may determine how to remedy the error.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

#### **§2037. Summer Retest Administration**

A. Students who were enrolled in grades 10 and 11 for the first time during the spring test administration and did not score approaching basic in the required LAA 2 tests are eligible for the summer retest administration.

B. Students who were enrolled in grades 10 and 11 in public schools for the first time during the spring test administration but who were absent during testing are eligible for the summer retest administration.

C. Students who enrolled in and attended grades 10 and 11 after the spring test administration and before the close of the regular academic year are eligible for the summer retest administration.

D. Students who enroll in grades 10 and 11 after the close of the regular academic year but did not attend public schools during the academic year are not eligible for the summer retest administration. They must test during the fall retest administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

#### **§2039. LAA 2 Transfer Students**

A. The following rules apply for transfer students who are Louisiana residents transferring into the Louisiana public school district from out-of-state schools, nonpublic schools, or approved home study programs who meet LAA 2 Participation Criteria, meet all graduation requirements for a high school diploma as established in Bulletin 741.

1. Requirements for students who have never been in membership in a Louisiana public school and are transferring from out-of-state schools, from Louisiana nonpublic schools, or from an approved home study program are as follows.

a. A student who entered the ninth grade during the 2005–2006 school year and thereafter and who transferred to a Louisiana public school at or below the ninth grade shall take and pass the English Language Arts and Mathematics sections and either the Science or the Social Studies test of LAA 2.

b. A student who entered the ninth grade in 2005–2006 and thereafter and who is classified by the local school district as a tenth grade student shall take and pass the English Language Arts and Mathematics tests and either the Science or the Social Studies test of LAA 2.

c. A student who entered the ninth grade in 2005–2006 and thereafter and who is classified by the local school district as an eleventh grade student shall take and pass either the Science or the Social Studies test of the LAA 2.

d. A student who entered the ninth grade in 2005–2006 and thereafter and who is classified by the local school district as a twelfth grade student shall not be required to take any part of the LAA 2.

2. A student who was in initial membership in Louisiana public schools as a student in grades K through 6 shall adhere to the following policy.

a. A student who returns in the seventh and/or eighth grade for a period in membership of 160 days total shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the LAA 2.

b. A student who returns in the ninth grade shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the LAA 2.

c. A student who returns and is classified as a tenth grade student shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the LAA 2.

d. A student who returns and is classified as an eleventh grade student shall take and pass either the Science or the Social Studies test of the LAA 2.

e. A student who returns and is classified as a twelfth grade student shall not be required to take any part of the LAA 2.

3. A student who was in initial membership in Louisiana public schools in the seventh and/or eighth grade for a period of 160 days total, transferred out, and subsequently returned at any grade level shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the LAA 2.

4. A student who was in initial membership in Louisiana public schools as a ninth grade student, transferred out, and subsequently returned at any grade level shall be required to take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the LAA 2.

5. A student who was in initial membership in Louisiana public schools as a tenth grade student, transferred out, and subsequently returned at any grade level shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the LAA 2.

6. A student who was in initial membership in Louisiana public schools as an eleventh grade student, transferred out, and subsequently returned at the eleventh- or twelfth-grade level shall take and pass either the Science or the Social Studies test of the LAA 2.

7. A student who was in initial membership in Louisiana public schools as a twelfth grade student, transferred out, and subsequently returned as a twelfth grader shall not be required to take any part of the LAA 2.

8. All membership in grades 7 through 11 must be considered when determining which test to administer to a student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

#### **§2041. Student Membership Determination**

A. Student membership is determined when a student in school is identified with the following minimum required identification elements:

1. state identification number;
2. full legal name;
3. date of birth;
4. sex;
5. race;
6. district and school code;
7. entry date; and
8. grade placement

(Adapted from Section 10, page 10.1, Student Information System User's Guide, LDE).

B. A student must be in membership in a Louisiana public school(s) for 160 days per year or 80 days per semester in order to be eligible to receive grades (1103G, Bulletin 741, LDE).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:

### **Chapter 33. Assessment of Special Populations**

#### **§3303. Special Education Students**

A. All special education students must participate in statewide assessments. Students are to take the test that corresponds to the grade in which they are enrolled. Special education students who meet specific participation criteria as stated in Bulletin 1530 Louisiana IEP Handbook for Students with Disabilities and whose Individualized Education Plans (IEPs) indicate they will participate in an alternate assessment may participate in an alternate assessment, such as the LEAP Alternate Assessment, Level 1 (LAA 1) or LEAP Alternate Assessment, Level 2 (LAA 2). The assessment in which the student is to participate and any accommodations the student is to receive for instruction and assessment must be documented annually on the program/services page of the student's IEP. Test accommodations cannot be different from or in addition to the accommodations indicated on the student's IEP and provided in regular classroom instruction and assessment.

1. Individualized Education Plan. According to the 2004 amendments to the Individual with Disabilities Education Act (IDEA), accommodations are provided in regular classroom instruction based on a student's needs and are documented in the student's IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1945.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1560 (July 2005), amended LR 32:239 (February 2006), LR 36:

#### **§3307. Limited English Proficient Students**

A. - B.6.c. ...

C. Approved Accommodations for LEP Students

1. The following accommodations are to be provided for LEP students participating in the LEAP, GEE, iLEAP, LAA 2, and EOC assessments.

1.a. – c. ...

d. Tests Read Aloud. Students may be allowed to have portions of the tests read to them, with the exception of portions designed to measure reading comprehension, which are clearly designated in the *Test Administration Manuals*. No passages, questions, or distractors (multiple choices) of any English language arts assessment that measures reading comprehension may be read aloud. Such tests include the Reading and Responding session of LEAP, GEE, and LAA 2, Reading, Part 2 of *iLEAP* grades 3, 5, 6, and 7, Reading Comprehension of *iLEAP* grade 9 and the “old” GEE, and any others developed to measure this skill. Directions only to these sessions may be signed or cued. When signing or cueing, the test administrator must exercise caution to avoid providing answers. It is a breach of test security to provide signs or cues that convey answers.

e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq. and R.S. 17:24.4 (F)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1562 (July 2005), amended LR 32:240 (February 2006), LR 33:264 (February 2007), LR 33:1010 (June 2007), LR 36:

### **Chapter 35. Assessment of Students in Special Circumstances**

#### **§3501. Approved Home Study Program Students**

A. – B. ...

C. Students from state-approved home study programs have the option of taking the grades 4 and 8 LEAP Science and Social Studies tests.

D - G ...

H. Students enrolled in state-approved home study programs are not eligible to participate in LAA 1, LAA 2, or ELDA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1-17.236.2, R.S. 17:6 (A) (10) (11) (15), R.S. 17:10, R.S. 17:22 (6), R.S. 17:391.1-17: 391.10, R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1563 (July 2005), amended LR 32:240 (February 2006), LR 33:264 (February 2007), LR 36:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 8, 2010, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

New and updated policy language will be added to Chapter 3, Test Security regarding administrative errors. Chapter 7, Assessment Program Overview testing chart will be edited to reflect the addition of Geometry as an EOC test. Policy language will be edited in Chapter 11, Louisiana Educational Assessment Program (LEAP) for grades 4 and 8 English Language Arts Achievement Level Descriptors, Mathematics Achievement Level Descriptors, Science Achievement Level Descriptors, and Social Studies Achievement Level Descriptors for Advanced, Mastery, Basic, Approaching Basic, and Unsatisfactory. Policy language regarding rescore requests in Chapter 11, Louisiana Educational Assessment Program (LEAP) will also be edited. Policy language will be edited in Chapter 13, Graduation Exit Examination (GEE) for grade 10 English Language Arts Achievement Level Descriptors and Mathematics Achievement Level Descriptors, and grade 11 Science Achievement Level Descriptors, and Social Studies Achievement Level Descriptors for Advanced, Mastery, Basic, Approaching Basic, and Unsatisfactory. Chapter 13, Graduation Exit Examination (GEE) rescore request policy language will also be edited. Chapter 18, End-Of-Course Tests (EOCT) is being updated to align the assessment with LEAP and GEE by providing new and updated statewide test information about EOCT Double Jeopardy Rule, First Cohort, EOCT Rescores, EOCT Administration Rules, EOCT Retest Administration, and EOCT Transfer Rules. The proposed rule change will edit policy language in Chapter 20, Louisiana Alternate Assessment Level 2 (LAA 2) for grades 4, 5, 6, 7, 8, 9 and 10 LAA 2 English Language Arts Achievement Level Descriptors (ALDs) for Basic, Approaching Basic, Foundational, and Pre-Foundational, as well as align the LAA 2 assessment with LEAP and GEE by providing new and updated statewide test information about the LAA 2 Double Jeopardy Rule, LAA 2 Rescores, LAA 2 Administration Rules, LAA 2 Summer Retest Administration, LAA 2 Transfer Students, and LAA 2 Student Membership Determination. Policy language in Chapter 33, Assessment of Special Populations that addresses Special Education Students and Limited English Proficient Students will be edited to align new guidelines for LAA 2. Chapter 35, Assessments of Students in Special Circumstances policy language will be updated to include guidelines that reference statewide assessments, LAA 1, LAA 2, ELDA, and update the name change of Office of Youth Development to its new name Office of Juvenile Justice. The proposed rule change will have no implementation cost to state or local governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections at the state or local governmental levels.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition and employment.

Beth Scioneaux  
Superintendent  
0912#010

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor**

**Board of Louisiana River Pilot Review and Oversight**

General Provisions  
(LAC 46:LXX.Chapters 150 and 152)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Louisiana River Pilot Review and Oversight hereby gives notice of intent to promulgate rules and regulations. The proposed rules and regulations are in the public's interest and will promote public safety. This board has a strong commitment to the public due to the safety sensitive nature of the duties performed by state commissioned pilots. Chapter 150 pertains to the general provisions of the board. Chapter 152 pertains to the general provisions of the board as it relates to domicile, meetings and officers of the board as well as the powers and duties of the board.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**LXX. River Pilots**

**Subpart 6. Board of Louisiana River Pilot Review and Oversight**

**Chapter 150. General Provisions**

**§15001. Authority**

A. These rules and regulations are promulgated in accordance with the provisions of R.S. 34:1135.A. in order to provide for the implementation, enforcement, and administration of R.S. 34:1131 et seq., which provide for the creation, powers, duties, and responsibilities of the Board of Louisiana River Pilot Review and Oversight. These regulations are further promulgated in accordance with the Administrative Procedure Act (APA), R.S. 49:950 et seq., to the extent that any procedure in the APA does not conflict with any provision of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 34:1135.A.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:

**§15003. Purpose**

A. The purposes of these rules and regulations are as follows:

1. to establish rules and regulations for the procedures to be used by the board in performing its duty to request, receive, and review reports prepared by the Board of Commissioners or Examiners and its rendering of decisions:

- a. not to act on an accident report;
- b. approving a consent discipline; or
- c. rendered in a formal disciplinary adjudication.

2. to establish rules and regulations for the procedures to be used by the board in performing its duty to receive appeals from a formal disciplinary proceeding before the Board of Commissioners or Examiners;

3. to establish rules and regulations for the procedures to be used by the board in performing its duty to receive sworn complaints against any pilot from any source for actions taken by a pilot while in the performance of his duties;

4. to establish rules and regulations for the procedures to be used by the board in performing its duty to submit an annual report to the general counsel of the Department of Transportation and Development on accident investigations;

5. to establish rules and regulations for the procedures to be used by the board in requiring that a permanent accident or incident record on each pilot be maintained as well as an accident investigation file as long as the pilot involved has a state commission;

6. to establish rules and regulations for the procedures to be used by the board in performing its duty to submit accident reports in which state property is involved or damaged to the general counsel of the Department of Transportation and Development.

AUTHORITY NOTE: Promulgated in accordance with La. R.S. 34:1135.C - K.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

**§15005. Definitions**

A. The following terms as used in these rules and regulations shall have the following meanings:

*Accident*—any occurrence involving a vessel that results in any allision, collision, grounding, loss of life, or personal injury that requires professional medical treatment (treatment beyond first aid).

*Adjudication*—the board's or the Board of Commissioners' or Examiners' process for the formulation of a decision or order.

*Administrative Complaint*—any written document filed by an investigating officer with the board or the Board of Commissioners or Examiners in the procedure prescribed in §152117 of this Rule.

*Administrative Procedure Act or APA*—the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

*Alcohol*—any intoxicating beverage, fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol, and any distilled spirit as defined in 27 U.S.C. 211.

*Board of Commissioners or Examiners*—the Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:941 et seq., the Board of River Port Pilot Commissioners for the Port of New Orleans, established in R.S. 34:991 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, established in R.S. 34:1041 et seq., and the Board of River Port Pilot Commissioners and Examiners for the Calcasieu River Waterway, established in R.S. 34:1072 et seq.

*Board or Board of Review and Oversight*—the Louisiana River Pilot Review and Oversight, established by R.S. 34:1131 et seq.

*Complaint*—any sworn typewritten submission filed by any source with the board against any state commissioned pilot for actions taken by the pilot while in the performance of his duties, including acts of misconduct, carelessness, incompetence, intoxication, negligence, the refusal to offer timely pilotage services without just cause, abuse of legally prescribed medication and illegal use of controlled dangerous substances.

*Controlled Dangerous Substance*—any drug as defined in R.S. 40:961.7 and R.S. 40:964, and any controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

*Decision or Order*—the final disposition of any matter decided by the board involving a state commissioned pilot while the pilot is acting under his state commission. A decision or order shall also mean the final disposition of any matter decided by the Board of Commissioners or Examiners involving a state commissioned pilot.

*Drug*—all controlled dangerous substances as defined in R.S. 40:961.7 and R.S. 40:964, and any substance, by whatever official name, common or usual name, chemical name, or brand name designated in Schedules I-V, 21 CFR 1308.11-15.

*Grounding*—a beaching or running aground in which the vessel is damaged or needs assistance to be refloated.

*Incident*—

- a. any accident as defined in this Subsection;
- b. any sworn complaint involving a state commissioned pilot while acting under his commission; or
- c. any other event involving a Louisiana state commissioned pilot while acting under his commission that, in the discretion of any member of the Board of Commissioners or Examiners, justifies further investigation.

*Incident Report*—the form provided by the board to be completed and submitted by the Board of Commissioners or Examiners involving any incident.

*Notice or Issue Notice or Service*—in connection with these regulations and the requirements for notice in the APA, R.S. 49:955.B, means that all references to the providing and delivering of service of written documents or pleadings shall be by personal service or certified mail, return receipt requested, or by means of a commercial overnight carrier.

*Party*—in connection with an appeal of a formal disciplinary adjudication before the Board of Commissioners or Examiners, means the pilot who is the subject of the investigation, the Board of Commissioners or Examiners, and the investigator appointed by the Board of Commissioners or Examiners.

*Pilot*—as defined in R.S. 1131(3), means those pilots as designated in R.S. 34:941, 992, 1041, and 1071.

*Prescribed Medication*—controlled dangerous substance distributed by the authorization of a licensed physician as defined in R.S. 40:961.31.

*Report*—any written submission, in the manner prescribed by §152107 of this Subpart prepared by the Board of Commissioners or Examiners as follows:

a. relating to an accident involving any state commissioned pilot while the pilot is acting under his state commission;

b. relating to a consent discipline agreed to by and between a state commissioned pilot and the Board of Commissioners or Examiners; and

c. relating to a formal disciplinary adjudication rendered by the Board of Commissioners or Examiners.

*Rule*—each statement, guide, or requirement of the board for conduct or action relating to its duties, or which prescribes the procedure or practice requirements of the board.

*Rulemaking*—the process employed by the board for the formulation of a rule.

*Sworn*—in connection with a complaint, means the allegations made by the complainant that are given in writing and under oath before a notary public in which the complainant swears to the truthfulness of the allegations, subject to the penalties for perjury.

AUTHORITY NOTE: Promulgated in accordance with 21 CFR 1308.11-15, 27 U.S.C. 211(a)(5) and 27 CFR 1.10, R.S. 34:1129.2, R.S. 1131(3), R.S. 34:1133.G, R.S. 34:1135.F, R.S. 34:1135.C – E, and R.S. 49:951.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

## **Chapter 152. Board of Louisiana River Pilot Review and Oversight**

### **Subchapter A. General Provisions**

#### **§15201. Domicile and Meetings**

A. The domicile of the board shall be the Parish of Orleans which address is presently 201 St. Charles Avenue, 31st Floor, New Orleans, LA 70170 or such other address as the board members establish from time to time.

B. The board shall meet at least twice a year, at times and places of its choosing. Other meetings may be held at the discretion of the board. Meetings may be called by the chairman, or at the written request of any three members of the board.

C. The board shall be composed of 11 members. Six members of the board shall constitute a quorum, but any decision of the board shall be obtained by a majority vote of the members of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1133.A, R.S. 34:1134.A.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

#### **§15203. Officers of the Board**

A. The officers of the board shall be a chairman, a vice chairman, and a secretary/treasurer, who shall be elected at the first meeting of the board, and annually thereafter.

B. Elections of officers shall be held annually. There shall be no limit to the number of times a member of the board may be elected to any office.

C. The duties of the officers shall be:

1. Chairman - shall preside at all board meetings and shall be the Chief Executive Officer, shall call all board meetings, shall conduct all meetings in accordance with Robert's Rules of Order, and shall be the designee of the board with the authority to request reports under the provisions of R.S. 34:1135.C.

2. Vice Chairman - shall act in the absence of the chairman, and shall carry out such other assignments as may be delegated or assigned to him by the chairman.

3. Secretary/Treasurer - shall maintain the minutes of meetings and financial records, if any, shall prepare and submit the annual report under R.S. 34:1135.I, shall ensure that the Board of Commissioners or Examiners maintain accident or incident records under R.S. 34:1135.J as prescribed in §152121.B of this Chapter, shall prepare and submit accident reports under R.S. 34:1135.K, and shall provide a copy of the board's rules and regulations to all state commissioned pilots under R.S. 34:1135.L.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1134.C, and R.S. 34:1132.C.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

## **Subchapter B. Powers and Duties**

### **§15205. Preamble**

A. No provision contained in this Subpart shall limit or supersede the duties and responsibilities of the Board of Commissioners or Examiners. Act 902, 2004 Leg., Regular Session (codified at R.S. 34:1131 et seq.) created the Board of Louisiana River Pilot Review and Oversight and the purpose was to provide review and oversight of decisions by the Board of Commissioners or Examiners regarding the actions taken by any pilot while the pilot is acting under his state commission. The Board, acting in its role, performs its duty under R.S. 34:1135.C to request, receive, and review reports prepared by the Board of Commissioners or Examiners similar to court of appeals in the judicial system but, unlike a court of appeals, also provides a forum for appeals from any party to a formal disciplinary proceeding before the Board of Commissioners or Examiners, and also provides a forum for sworn complaints to be filed, pursuant to its duty under R.S. 34:1135.G to receive sworn complaints against any pilot.

AUTHORITY NOTE: Promulgated in concurrence with R.S. 34:1135.C, F, G, M.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

### **§15207. Reports to the Board**

A. The Board of Commissioners or Examiners shall submit reports to the board related to accidents involving any state commissioned pilot subject to this Rule while the pilot is acting under his state commission, reports as to consent disciplines agreed to by and between a state commissioned pilot and the Board of Commissioners or Examiners, and reports as to formal disciplinary adjudications rendered by the Board of Commissioners or Examiners.

B. The chairman of the Board of Commissioners or Examiners shall submit the executed original report to the board with a copy to each of the members of the board and one certified copy to the affected state commissioned pilot.

C. The form and format of the report shall be set out by the board from time to time to allow for changes in technology.

D. On the outside of the front cover of each written report, there shall be inscribed with proper separation of lines and spaces, and in the following order:

1. the title of the Board of Commissioners or Examiners that prepared and submitted the report;

2. the date of the accident; and

3. the name of the pilot.

E. The contents of the report shall at least contain:

1. the date of the meeting of the Board of Commissioners or Examiners;

2. the result of the vote of the Board of Commissioners or Examiners;

3. the signature of the chairman certifying the results of the vote;

4. an excerpt of the minutes of the meeting of the Board of Commissioners or Examiners at which a decision was reached, whether that decision be not to act, a consent discipline, or a formal disciplinary adjudication;

5. the relevant supporting documents:

a. if no action, then a copy of the investigator's findings of fact, and/or report, and/or recommendations that were submitted to the Board of Commissioners or Examiners and upon which the decision to take no action was based; or

b. if a consent discipline or similar disposition, then the investigator's report submitted to the Board of Commissioners or Examiners including any findings of the fact and recommendation and the signed consent order; or

c. if an adjudication, then the investigator's report submitted to the Board of Commissioners or Examiners including any findings of the fact and recommendation and a copy of the Board of Commissioners' or Examiners' decision or adjudication order, which may contain findings of fact and conclusions and recommendations.

F. After receipt of the report, any individual board member may request in writing through the chairman that the report be supplemented by the Board of Commissioners or Examiners other relevant materials in the order in which such documents were filed, including:

1. the preliminary accident or incident report;

2. the investigator's findings of fact, and/or report, and/or recommendations;

3. the investigator's formal administrative complaint; or

4. the transcript of the hearing.

G.1. The chairman shall forward the individual board member's written request for supplemental documents to the Board of Commissioners or Examiners and forward a copy to all other members of the board.

2. In the event the Board of Commissioners or Examiners is unable or unwilling to provide the requested supplemental documents then the board, at its next meeting, may review the individual board member's written request and the Board of Commissioners or Examiners position and may consider by vote of the board ordering the Board of Commissioners or Examiners to produce the requested documents under §152107.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1135.C-E, and Uniform Rule 2-1.7.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

### **§15209. Requests from the Board**

A. The board may request, at any time, completed reports from the Board of Commissioners or Examiners related to accidents involving any state commissioned pilot

subject to this Rule while the pilot is acting under his state commission. Reports are considered completed upon the Board of Commissioners or Examiners reaching a decision as set out in §152107.E.4 of this Chapter. As to the completed reports, the Board of Commissioners or Examiners shall submit its report to the Board within 14 days after receiving a request from the board, if not previously submitted. Additionally, the board may request an updated status of any matter reported in an incident report previously submitted to the board by the Board of Commissioners or Examiners.

B. The board shall issue notice along with an executed original of each request to the Board of Commissioners or Examiners at its official address.

AUTHORITY NOTE: Promulgated in accordance with 33 CFR § 20.302, and R.S. 34:1135.C.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

**§15211. Board's Action on Reports of Accidents, Consent Disciplines, or Formal Disciplinary Adjudications**

A.1. After receiving a report on any accident, consent discipline, or formal disciplinary adjudication from the Board of Commissioners or Examiners, the board shall act on the report at its next meeting, provided it is submitted 30 days prior to the meeting, and shall either:

a. take no further action, thereby consenting to the action of the submitting Board of Commissioners or Examiners;

b. request additional information under §152109 of this Chapter, in which event the Board of Commissioners or Examiners shall submit the additional information within 30 days of receiving notice from the board, and the report shall be reconsidered along with the additional information at the board's next meeting provided it is resubmitted 30 days prior to the meeting; or

c. remand the matter to the submitting Board of Commissioners or Examiners for further investigation or proceedings, the results of which are to be submitted to the board.

2. The board at its discretion may waive the 30-day submission requirement and elect to act on an untimely submitted report. If the board does not waive the 30-day submission requirement, then the untimely report will be considered by the board at its next meeting.

B. Within 60 days of its meeting, the board shall notify the Board of Commissioners or Examiners in writing of its action under Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 1135.C-E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

**§15213. Appeals from Formal Disciplinary Adjudications**

A. Any aggrieved party to a formal disciplinary proceeding before the Board of Commissioners or Examiners has the right, at the party's discretion, to obtain a review of the final decision of the Board of Commissioners or Examiners by filing a written notice of appeal with the board. The party shall file the notice of appeal with the board within 45 days after the Board of Commissioners or

Examiners issued notice of its final decision, and shall serve a copy of the notice of appeal on the parties to the formal disciplinary proceeding.

B. In the event of parallel appeals to the board and the state district court, the board, if it completes its review before the state district court renders a decision, may intervene in the state district court's Appeal to advise the court of its findings.

AUTHORITY NOTE: Promulgated under La. R.S. 34:1135.F, and R.S. 49:964(1); based on 33 CFR § 20.1001.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

**§15215. Procedure for Appeal**

A. An appeal is taken by the timely filing of a notice of appeal with the board and the Board of Commissioners or Examiners.

B. Upon the timely filing of a notice of appeal, the Board shall issue notice that the appeal has been timely filed to the counsel of all other parties, to the respective Board of Commissioners or Examiners, and to any party not represented by counsel.

C. The return day of the appeal shall be 45 days from the date notice is given that the testimony is transcribed, which completes the record of proceedings.

D. The record of proceedings shall constitute the official record on appeal and consists of the transcript of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, the Board of Commissioners or Examiners' decision, all orders, and all rulings.

E. The Board of Commissioners or Examiners shall prepare the record of proceedings and lodge it with the Board on or before the return day. Failure of the chairman of the Board of Commissioners or Examiners to prepare and lodge the record timely on appeal shall not prejudice the appeal.

F. The record of proceedings prepared by the Board of Commissioners or Examiners to be lodged with the board shall be certified and dated by the chairman of the Board of Commissioners or Examiners upon completion.

G. Once the record of proceedings has been lodged, the board shall issue notice to the counsel of all other parties, to the respective Board of Commissioners or Examiners, and to any party not represented by counsel.

H. The appeal commences when the Board issues an order granting appeal and issues a notice of appeal to the counsel of all other parties, to the respective Board of Commissioners or Examiners, and to other parties not represented by counsel.

I. The board and the parties shall provide notice as follows:

1. The board shall serve upon each party to the proceeding a copy of each document issued by the board in the proceeding.

2. Unless the board orders otherwise, each person filing a document with the secretary/treasurer shall serve upon each party a copy of it.

3. If a party filing a document must serve a copy of it upon each party, each copy must bear a certificate of service, signed by or on behalf of the filing party, stating that he has so served it.

J. The secretary/treasurer of the board shall post the calendar of assignments for hearing at the official address of the board and issue notice to all counsel of record, and to any party not represented by counsel, not less than 30 days prior to the date fixed for the hearing of an appeal on the calendar, provided, however, that the 30 day notice herein shall not be applicable when there will be no oral argument.

K. Public notice. Upon the granting of an appeal under R.S. 34:1135.F, the board shall provide public notice of the hearing. The notice shall be posted in the domicile of the board, at the official address of the board and provided to anyone who may request notice.

L. Preparation of Briefs. The procedures for filing briefs, requesting and conducting oral arguments, and serving notice shall be taken in the same manner as in any civil appeal under the Louisiana Uniform Rules of Court for the Courts of Appeal, as they exist now and as they may be amended.

M. Hearings. The board may order oral argument based on the record of proceedings submitted. The order of argument, length of time, reading from briefs, and use of textual materials and exhibits shall be in the same manner as in any civil appeal under the Louisiana Uniform Rules of Court for the Courts of Appeal, as they exist now and as they may be amended.

N. Actions Available to the board. In an appeal, following notice and a hearing, the board may acquit the pilot or may impose its own sanctions against a pilot, including but not limited to reprimand of the pilot, ordering pilot to participate in remedial training, impose a fine not to exceed \$10,000.00, order the pilot to pay the costs of the hearings inclusive of attorney fees, or recommend to the governor that the pilot's commission be suspended or revoked.

O. Decision or Judgment. The board shall render a decision or judgment as to an appeal at the hearing or at its next meeting, which shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with the rules of the board, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

P. Notice of Judgment. Notice of the judgment of the board shall be issued by the board to all counsel of record, to the respective board of Commissioners or Examiners, and to all parties not represented by counsel. The board shall file a certificate in the record showing the date on which and the names of all parties or persons to whom the notice of judgment was delivered or mailed.

AUTHORITY NOTE: Promulgated in accordance with 33 CFR §20.304, 33 CFR §20.401, 33 CFR §20.402, 33 CFR §20.903, C. Civ. P. Art. 2121, C. Civ. P. Art. 2125, C. Civ. P. Art. 2127, C. Civ. P. Art. 2127.1, R.S. 34:1135.F, R.S. 49:964(1) based on 33 CFR §20.1001, R.S. 49:958, La. Uniform Rules, Courts of Appeal 2-11.9.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

#### **§15217. Sworn Complaints to the Board**

A. Any source may file a sworn complaint within one year of the alleged acts complained of.

B. The board shall receive any sworn complaint from any source against a state commissioned pilot while in the performance of his duties, including acts of misconduct, carelessness, incompetence, intoxication, negligence, or the refusal to offer timely pilotage services without just cause, and any sworn complaint against a pilot for abuse of legally prescribed medication and/or illegal use of controlled dangerous substances.

C. Any sworn complaint submitted by any source to the board shall be typewritten and submitted on plain paper and shall include the date and time of the incident, a description of what happened, the type of incident, casualties, location, conditions, name of vessel piloted, if known, any other vessels, structures, or objects involved, the name of the pilot, if known, and any allegations against the pilot, and shall be given in writing and under oath before a notary public in which the complainant swears to the truthfulness of the allegations, subject to the penalties for perjury.

D. If a sworn complaint is not submitted in the prescribed manner, the board shall return it, with an explanation of error, and without prejudice to the sender to properly refile.

AUTHORITY NOTE: Promulgated under La. R.S. 34:1135.G.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

#### **§15219. Board's Action on Sworn Complaints**

A. After receiving a sworn complaint as defined in §150105 of this Subpart from any source, the board shall act on the complaint at its next meeting provided it is submitted at least 30 days prior to the meeting. Within 60 days of its meeting, the board shall notify the complainant and the respective Board of Commissioners or Examiners in writing of its action to either:

1. refer the matter to the appropriate Board of Commissioners or Examiners for investigation, the results of which are to be submitted to the board in the form of a report; or

2. conduct investigations and, if necessary, conduct hearings pursuant to the Administrative Procedure Act and the rules adopted by the board.

B. Conducting Investigations – After the board makes a decision under §15219.A.2 of this Chapter, the board may begin its investigation under the following procedures:

1. The board may appoint an investigating officer to investigate the complaint and report to the board.

2. Following the board's decision to conduct an investigation under §15219.A.2 of this Chapter, above, and prior to the acceptance of an administrative complaint, which begins the commencement of administrative proceedings and noted in §15219.I of this Chapter, the Board shall follow the provisions of the Louisiana Open Meetings Law, R.S. 42:6.1(A)(4), which provides that investigative proceedings regarding allegations of misconduct may be held in an executive session pursuant to R.S. 42:6.

3. If the board, or its designated investigating officer, is of the opinion that the complaint, if true, is sufficient to justify a further investigation, it shall appoint an investigating officer, or authorize its designated investigating officer to conduct a full investigation of the complaint.

4. Once authorized under §152119.B.2 of this Chapter, the investigating officer, who may be an active or retired member of Board of Examiners of Bar Pilots for the Port of New Orleans, the Board of River Port Pilot Commissioners for the Port of New Orleans, the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, or the Board of River Port Pilot Commissioners and Examiners for the Calcasieu River Waterway. He shall be assisted by an attorney, named as independent prosecutor by the board. In the event that the investigating officer, as contemplated by either §152119.B of this Chapter, is an active member of the board, he shall be recused from any participation in the decision of the case.

5. If the investigating officer is of the opinion that the conduct in question is not sufficient to justify further proceedings, he shall make a reasoned report to the board, which may accept or reject his recommendation.

C. If the investigating officer is of the opinion that the conduct complained of is sufficient to justify further proceedings and the board has accepted his recommendations, or if the board has rejected his recommendation to dismiss the complaint, he shall give notice to the state commissioned pilot, the Board of Commissioners or Examiners, and the complainant, by regular mail, of the facts or conduct on which the complaint is based, and offer the pilot an opportunity to show compliance with the laws or regulations allegedly violated. If, in the opinion of the investigating officer, the pilot is able to demonstrate such compliance, then the investigating officer shall make a report to the board, recommending to the board that the complaint be dismissed. The board may accept or reject the recommendation of the investigating officer.

D. If the state commissioned pilot is unable to demonstrate such compliance, or if the board rejects the recommendation of the investigating officer to dismiss the complaint, the investigating officer shall, with the assistance of the board-appointed prosecutor, initiate proceedings by filing a written administrative complaint with the board, which shall be signed by the investigating officer.

E. The written administrative complaint shall name the accused state commissioned pilot as respondent in the proceedings. It shall also set forth, in separately numbered paragraphs, the following:

1. a concise statement of material facts and matters alleged and to be proven by the investigating officer, including the facts giving rise to the board's jurisdiction over the respondent;

2. the facts constituting legal cause under law for administrative action against the respondent; and

3. the statutory or regulatory provisions alleged to have been violated by respondent.

F. The administrative complaint shall conclude with a request for the administrative sanction sought by the investigating officer, and shall state the name, address, and telephone number of administrative complaint counsel (the prosecutor) engaged by the board to present the case at the evidentiary hearing before the board.

G. The board may either accept or reject the administrative complaint.

H. If the board rejects the administrative complaint, the case may be either dismissed or referred back to the investigating officer for further investigation.

I. Administrative Proceedings Commence: If the board accepts the administrative complaint, the board shall docket the administrative complaint and schedule the administrative complaint for hearing before the board not less than 45 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the investigating officer or respondent pursuant to a showing of proper grounds. In the event the respondent's commission as a pilot has been suspended by the board pending hearing, the evidentiary hearing on the administrative complaint shall be noticed and scheduled not more than 45 days after the filing of the administrative complaint.

J. A written notice of the administrative complaint and the time, date, and place of the scheduled hearing thereon shall be served upon the respondent and the Board of Commissioners or Examiners. The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held, and shall be accompanied by a certified copy of the administrative complaint.

K. The case shall be prosecuted by the independent prosecutor, also referred to as administrative complaint counsel, who shall handle the case to its conclusion. He shall be entirely independent of the authority of the Board in going forward with the matter, and may conduct such further investigation, and prepare and try the case in such manner as he may deem appropriate.

L. Within 15 days of service of the administrative complaint, or such longer time as the board, on motion of the respondent, may permit, the respondent may answer the administrative complaint, admitting or denying each of the separate allegations of fact and law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that the respondent does not file a response to the administrative complaint, all matters asserted therein shall be deemed denied.

M. Any respondent may be represented in an adjudication proceeding before the board by an attorney at law duly admitted to practice in the State of Louisiana. Upon receipt of service of an administrative complaint pursuant to these rules, or thereafter, a respondent who is represented by legal counsel with respect to the proceeding shall, personally or through such counsel, give written notice to the Board of the name, address, and telephone number of such counsel. Following receipt of proper notice of such representation, all further notices, administrative complaints, subpoenas or other process related to the proceeding shall be served on respondent through his or her designated counsel of record.

N. All pleadings, motions or other papers permitted or required to be filed with the board in connection with a pending adjudication proceeding shall be filed with the office of the board and shall by the same method of delivery be concurrently served upon administrative complaint counsel designated by the administrative complaint, if filed

by or on behalf of the respondent, or upon respondent, through counsel of record, if any, if filed by administrative complaint counsel.

1. All such pleadings, motions or other papers shall be submitted on plain white letter-size (8 1/2" x 11") bond, with margins of at least one inch on all sides, and double spaced except as to quotations and other matters customarily single spaced, shall bear the caption and docket number of the case as it appears on the administrative complaint, and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by Subsection N of this Section.

2. The board may refuse to accept for filing any pleading, motion or other paper not conforming to the requirements of this Section and shall return such filing to the sender with an explanation of error and without prejudice.

O. Motions: Motions for continuance of hearing, for dismissal of the proceeding, and all other pre-hearing motions shall be filed not later than 30 days following service of the administrative complaint on the respondent or 15 days prior to the hearing, whichever is earlier. Each pre-hearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefore. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion. Within 10 days of the filing of any such motion and memorandum or such shorter time as the board may order, the investigating officer, through administrative complaint counsel, may file a memorandum in opposition to or otherwise setting forth the investigating officer's position with respect to the motion.

1. A motion for continuance of hearing shall be filed within the delay prescribed by this Subpart, provided that the board may accept the filing of a motion for continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of pre-hearing motions.

2. A scheduled hearing may be continued by the board only upon a showing by respondent or administrative complaint counsel that there are substantial legitimate grounds that the hearing should be continued, balancing the right of the respondent to a reasonable opportunity to prepare and present a defense to the complaint and the board's responsibility to protect the public health, welfare and safety. Except in extraordinary circumstances evidenced by verified motion or accompanying affidavit, the board will not ordinarily grant a motion to continue a hearing that has been previously continued upon motion of the same party.

3. If an initial motion for continuance is not opposed, it may be granted by the presiding officer.

4. Any pre-hearing motion, other than an unopposed initial motion for continuance of hearing which may be granted by the chairman of the board, shall be referred for decision to the board member designated by the board as the presiding officer of the board with respect to the proceeding for ruling. The presiding officer in each matter before the board may, in his discretion, refer any pre-hearing motion to the board for disposition, and any party aggrieved by the decision of a presiding officer on a pre-hearing motion may request that the motion be reconsidered by the entire board.

5. Pre-hearing motions shall ordinarily be ruled upon by the presiding officer or the board, as the case may be, on the papers filed without hearing. On the written request of respondent or of administrative complaint counsel, however, and on demonstration that there are good grounds therefore, the presiding officer may grant opportunity for hearing by oral argument on any pre-hearing motion.

P. Upon request of the respondent or administrative complaint counsel and compliance with the requirements of this Section, the chairman of the board or the presiding officer shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

Q. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

R. In any case of adjudication noticed and docketed for hearing, counsel for respondent and administrative complaint counsel may agree, or the presiding officer may require, that a pre-hearing conference be held among such counsel, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

S. Following such pre-hearing conference the parties shall, and without such conference the parties may, agree in writing on a pre-hearing stipulation which should include:

1. a brief statement by administrative complaint counsel as to what such counsel expects the evidence to be presented against respondent to show;

2. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;

3. a list of the witnesses to be called by administrative complaint counsel and by respondent, together with a brief general statement of the nature of the testimony each such witness is expected to give;

4. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents, or issues; and

5. an estimate of the time required for the hearing.

T. Adjudication hearings, being the hearings conducted on the merits of the administrative complaint, shall be conducted in open session in accordance with the Louisiana Open Meetings Law, R.S. 42:6.

U. Adjudication hearings, including the presentation of facts and arguments, examination and cross-examination of witnesses, offering and introduction of evidence and exhibits, testimony, rulings on evidentiary and procedural questions, compiling of the record, findings of fact, weighing of evidence and notice of facts, administration of oaths, and regulation of the hearing shall be conducted in accordance with the provisions of the APA, R.S. 49:955 to 956, except that Notice as defined in §150105 of this

Subpart shall govern all requirements concerning notice, issue of notice, and service. Additionally, the use of the term "agency" or "agencies" in the APA shall mean board, and R.S. 49:956(d) is modified in part by the provisions of R.S. 34:1135.N.

V. Except as otherwise governed by the provision of these rules, adjudication hearings before the board shall be governed by the Louisiana Code of Evidence, insofar as the same may be applied, and the provisions of APA, R.S.49:960 shall be applicable to the board and the parties and use of the term "agency" or "members" or "employees" shall mean board, board members, and staff.

W. In any adjudication hearing, the board's deliberations may be held in executive session pursuant to R.S. 42:6.1.A(1).

X. In any adjudication hearing, the board's decision shall be in an open meeting.

Y. Following notice and a hearing, the board may either:

1. acquit the pilot; or
2. impose sanctions against the pilot, including but not limited to reprimand of the pilot, order the pilot to participate in remedial training, impose a probationary period, impose a fine not to exceed \$10,000 order the pilot to pay the costs of the hearings inclusive of attorney fees, or recommend to the governor that the pilot's commission be suspended or revoked.

3. The board shall have the authority to suspend a pilot's commission in the event of an emergency pursuant to the emergency procedures set out in the APA, R.S. 49:961, which provides that no revocation, suspension, annulment, or withdrawal of any state commission is lawful unless, prior to the institution of agency proceedings, the board gives notice by mail to the state commissioned pilot of facts or conduct which warrant the intended action, and the state commissioned pilot is given an opportunity to show compliance with all lawful requirements for the retention of the state commission. If the board finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a state commission may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1135.G, R.S. 34:1135.N, R.S. 42:6.1, R.S. 42:6, R.S. 42:6.1(A)(4), R.S. 49:961.C, R.S. 49:955-56, Pilot Rules, Title 46 §304.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

#### **§15221. Annual Reports**

A. In compliance with R.S. 34:1135.I, the board requires that the Board of Commissioners or Examiners maintain a permanent accident or incident record on each pilot it regulates as well as an accident investigation file as long as the pilot involved has a state pilot commission. The board shall have access to these records.

B. The board shall submit an annual report to the general counsel of the Department of Transportation and Development on any accident investigation.

1. The report shall identify the accident and location, the pilot involved, a description of the damage sustained, and the action taken by the board or the Board of Commissioners or Examiners. The annual report shall be submitted on or before the last day of February for accidents occurring during the previous year.

2. The report shall be submitted in whatever form the Department of Transportation and Development may require.

C. The board shall submit an accident report to the general counsel of the Department of Transportation and Development in those accidents in which state property is involved or damaged as soon as practically possible.

1. The report shall include a description of the circumstances surrounding the accident, including but not limited to the time and location, the state property involved or damaged, the name of the pilot, the name of the vessel, the name of the vessel's agent, and the name of the insurer of the vessel.

2. The report shall be submitted in whatever form the Department of Transportation and Development may require.

AUTHORITY NOTE: Promulgated based on R.S. 34:1135.I, R.S. 34:1135.K.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

#### **§15223. Rules Supplied to State Commissioned Pilots**

A. The board shall provide to all state commissioned pilots a copy of the board's rules and regulations.

B. In compliance therewith the Board of Examiners or Commissioners shall on behalf of the board furnish the state commissioned pilots they regulate a copy of the board's rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1135.L.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

#### **§15225. Evidentiary Issues**

A. Considering the purpose of the board and the Boards of Commissioners or Examiners is to regulate state commissioned pilots and not to determine issues of liability or negligence, certain prohibitions concerning the use of its reports and testimony from their members and employees are hereby adopted:

1. The discovery of and admissibility as evidence in a civil proceeding of the reports of the board or the Board of Commissioners or Examiners (other than in an administrative proceeding initiated by the board or the Board of Commissioners or Examiners) involving a state commissioned pilot is prohibited. The term "reports" includes findings of fact, opinions, recommendations, deliberations, and conclusions.

2. The use of any form of discovery, including depositions of members of the board or the Board of Commissioners or Examiners, its employees, investigators, counsel, and prosecutors, and the compelling or allowing of their testimony in any civil or administrative proceeding

relevant to the performance of their duties is prohibited, their testimony is not admissible, and the report is not considered the report of an expert.

3. The board and the Board of Commissioners or Examiners, as well as its members, employees, investigators, counsel, and prosecutors may enforce these provisions by means of injunctive relief.

4. If the court grants injunctive relief as sought by the board and the Board of Commissioners or Examiners, or any of its members, employees, investigators, counsel, and prosecutors, the court may award to the board, the Board of Commissioners or Examiners, or any of its members, employees, investigators, counsel, or prosecutors attorneys fees and costs incurred against the party attempting to use the information prohibited in R.S. 34:1135.N.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1135.N.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight LR 36:

### **Family Impact Statement**

The proposed Rule of the Board of Louisiana River Pilot Review and Oversight is new and should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability, and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rules and regulations.

### **Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses.

### **Public Comments**

All interest persons are invited to submit written comments on the proposed Rule. Such comments must be in writing and received no later than Friday, February 5, 2010, at 4:30 p.m. and should be sent to Chris Barbier, Legal Assistant, Board of Louisiana River Pilot Review and Oversight, 201 St. Charles Ave., 31st Floor, New Orleans, LA 70170.

### **Public Hearing**

A public hearing will be held on Thursday, February 25, 2010 at 10 a.m. at 201 St. Charles Ave., 31st Floor, New Orleans, LA 70170, to receive comments on the proposed rules and regulations. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing at said hearing.

Richard Ganucheau  
Chairman

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: General Provisions**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

A cost of approximately \$1,428 will be incurred by the Board of Louisiana River Pilot Review and Oversight to publish these rules and regulations in the *Louisiana Register*. Funds are available for this one-time cost.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rules and regulations should have no effect on revenue collections of state or local governmental units. However, to the extent that the rules and regulations result in the monetary sanctioning of state commissioned officers, revenues to the board will be generated in an indeterminable amount. R.S. 34:1136 provides the board with the authority to administer, implement and enforce the provisions of R.S. 34:1131 et seq., with any self-generated funds or such other funds made available to the board through grants, allocations or appropriations from the United States government or donations, grants, or other forms of assistance from private foundations or other sources. Any such funds received as a result of actions taken by the board as a result of these rules and regulations will be utilized in accordance with R.S. 34:1136.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

State commissioned pilots as defined in R.S. 34:1131(3) will be directly affected by these rules and regulations as they are the persons for which the Board of Louisiana River Pilot Review and Oversight provides review and oversight. Among the board's powers, functions, duties and responsibilities as set forth in R.S. 34:1135 and these proposed rules and regulations, the board has the authority, following notice and a hearing, to acquit a pilot or impose sanctions against a pilot, including but not limited to reprimand of the pilot, ordering the pilot to participate in remedial training, impose a probationary period, impose a fine not to exceed \$10,000, order the pilot to pay the costs of hearings, inclusive of attorney fees, or recommend the governor suspend or revoke the pilot's commission and suspend a pilot's commission in the case of an emergency pursuant to the emergency procedures of the Administrative Procedure Act.

These rules and regulations provide the specified procedures by which the board requests, receives, and reviews actions as they relate to commissioned pilots, as well as making decisions that may economically affect commission pilots in the form of sanctions. The purpose of the sanctions is to deter poor performance by commissioned pilots and to provide for the safety of all people.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rules and regulations may have an impact on employment of current state commissioned pilots. Those commissioned pilots who violate these rules and regulations may have their commission affected due to disciplinary action taken by this board, the Board of Commissioners, the Board of Examiners or the governor. To the extent that the rules and regulations result in the sanctioning of state commissioned pilots there may be negative effects on the employment of state commissioned pilots in that the state commissioned pilots may be reprimanded, ordered to participate in remedial training,

placed on probation, fined, ordered to pay the costs of hearings, license suspension or revocation by the governor, or in the case of emergencies license suspension by the board.

Judge Richard Ganucheau  
Chairman  
1001#016

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**  
**Office of the Governor**  
**Boxing and Wrestling Commission**

Boxing and Wrestling Standards  
(LAC 46:XI.Chapters 1, 3, and 7)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., to adopt the following rules. The Louisiana State Boxing and Wrestling Commission, by this Notice of Intent, will make changes to Chapter 1. General Rules, Chapter 3. Professional Boxing to join with all sanctioning bodies that have now adopted the *Association of Boxing Commissions* (ABC) Referee Rules and Guidelines for boxing bouts concerning weight classes, weight differences, glove weights, accidental fouls. This Notice of Intent will correct an editing error that omitted a previously promulgated rule on Hepatitis B and C in §108. Medical Requirements; will express this Commission's insurance requirement recommendations; and will instruct promoters on proof of medical information received by contestants and address medical suspensions for contestants who have suffered technical knock outs and knock outs. This Notice of Intent will also specify mandatory rest periods between bouts and this commission's duty to deny any contestant a license if contestant has previously been denied a license due to medical issues; add safety and inspection rules pursuant to cages and rings; require promoters to register events with recognized national registries seven days prior to events for review of disciplinary and medical suspensions; add language to appoint event coordinators if deemed necessary by the commission and the fees paid by the promoter thereof; deletion of MTE amateur event rules deemed unnecessary and repetitive. An addition will also be made to the General Rules requiring all boxing officials must be appointed and/or approved by this Commission.

This proposed Rule will also delete and consolidate redundant rules in Chapters 1, 3, and 7 as well make minor changes to update these new rules to reflect the norms accepted by national associations regulating oversight of ring sports.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XI. Boxing and Wrestling**

**Chapter 1. General Rules**

**§108. Medical Requirements**

A. Each contestant participating in any sport under this commission's jurisdiction must furnish to the commission physician a certified medical certificate evidencing that the contestant has been tested for HIV, Hepatitis B, and Hepatitis C and said test results are negative. Said test and

certificate shall be dated not more than six months prior to the scheduled event and said certificate is to be presented at the time of "weigh in."

B. A promoter shall provide insurance and pay all deductibles for contestants to cover medical, surgical, and hospital care with a minimum limit of \$10,000 for injuries sustained while participating in a contest and \$10,000 to a contestant's estate if he dies of injuries suffered while participating in a contest. The Commission recommends health and accidental death benefits of \$100,000. At least 10 calendar days before an event the promoter shall provide to the department for each event to be conducted, a certificate of insurance showing proper coverage. The promoter shall supply to those participating in the event the proper information for filing a medical claim. The promoter must keep records proving the proper insurance information was filed with contestant and/or medical facility; if promoter fails to provide proof that contestant and/or medical facility has received the insurance information, promoter will bear the burden of paying all costs associated with medical treatment of injured party.

**C. Medical Suspensions**

1. A contestant losing by way of a technical knockout (TKO) resulting from head blows may receive a medical suspension and may not participate in any ring sport activity for a minimum of 30 days. A contestant losing by way of a knock out (KO) may receive a medical suspension and may not participate in any ring sport activity for a minimum period of 60 days. At the discretion of the physician, longer suspension periods may be issued for either the TKO or KO.

2. A ringside physician may issue a medical suspension any time he/she believes it to be in the best interest for the safety of a contestant (i.e., high blood pressure at pre-fight physical). In any/all cases, the decision by the physician to issue or extend a suspension is final.

3. The commission may deny a contestant a license if their license to participate or compete has been denied, refused or disciplined for a medical condition by another state, tribal athletic commission, territory, federal agency or country.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:67.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 32:242 (February 2006), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 34:1601 (August 2008), LR 35:53 (January 2009), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:

**§111. Event Coordinator**

A. The commission may appoint an event coordinator for any event the commission deems necessary at a fee not to exceed more than \$350 per event to be paid by the promoter of said event.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:79.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 36:

**§123. Ringside Physicians**

A. - C. ...

D. Medical Suspensions (see §108.C.1-3, Medical Requirements)

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:70.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), re-promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), amended LR 36:

**§125. Event Approval**

A. - B. ...

1. Ring officials (judges, referees, etc.) for all ring sports under the jurisdiction of this commission will be appointed and/or approved by the commission.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2004 (August 2005), amended LR 36:

**§135. Safety**

A. ...

B. The commission will inspect all cages and rings prior to any events to ensure safety and stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), re-promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2005 (August 2005), amended LR 36:

**Chapter 3. Professional Boxing**

**§305. Contestant**

A. - B.3. ...

C. Boxers may receive a mandatory seven day rest period after competing in an event. Day one of the mandatory rest period shall commence on the first day following the event.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:

**§307. Weight Classes, Weight Differences, and Glove Weights**

A. No contest may be scheduled and no contestants may engage in a boxing contest without the approval of the commission or the commission's representative if the difference in weight between contestants exceed the allowance shown in the following schedule or if a glove's weight is deemed to be insufficient in any manner.

Weight Class	Weight Difference Allowance	Glove Weight
Bantamweight (over 115 to 118 pounds)	not more than 3 pounds	8 oz.
Super Bantamweight (over 118 to 122 pounds)	not more than 4 pounds	8 oz.
Featherweight (over 122 to 126 pounds)	not more than 4 pounds	8 oz.
Super Featherweight (over 126 to 130 pounds)	not more than 4 pounds	8 oz.
Lightweight (over 130 to 135 pounds)	not more than 5 pounds	8 oz.
Super Lightweight (over 135 to 140 pounds)	not more than 5 pounds	8 oz.
Welterweight (over 140 to 147 pounds)	not more than 7 pounds	8 oz.
Super Welterweight (over 147 to 154 pounds)	not more than 7 pounds	10 oz.
Middleweight (over 154 to 160 pounds)	not more than 7 pounds	10 oz.
Super Middleweight (over 160 to 168 pounds)	not more than 7 pounds	10 oz.
Light Heavyweight (over 168 to 175 pounds)	not more than 7 pounds	10 oz.
Cruiserweight (over 175 to 200 pounds)	not more than 12 pounds	10 oz.
Heavyweight (over 200 pounds)	no limit	10 oz.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:

**§321. Fouls, Deductions of Points Because of a Foul and Accidental Fouling**

A. - I.1. ...

2. If the referee determines that the bout may not continue because of an injury suffered as the result of an accidental foul, the bout will result in a no decision if stopped before three completed rounds in bouts scheduled for four rounds. Rounds are complete when the bell rings signifying the end of a round. If a bout is scheduled for more than four rounds and an accidental foul occurs causing an injury severe enough for the referee to stop the bout immediately, the bout will result in a no decision if stopped before four completed rounds.

3. If an accidental foul renders a contestant unable to continue the bout after three completed rounds have occurred the bout will result in a technical decision awarded to the boxer who is ahead on the score cards at the time the bout is stopped.

a. - b. ...

4. A fighter who is hit with an accidental low blow must continue after a reasonable amount of time but no more than five minutes or he/she will lose the fight.

J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development,

Weight Class	Weight Difference Allowance	Glove Weight
Mini Flyweight (up to and including 105 pounds)	not more than 3 pounds	8 oz.
Light Flyweight (over 105 to 108 pounds)	not more than 3 pounds	8 oz.
Flyweight (over 108 to 112 pounds)	not more than 3 pounds	8 oz.
Super Flyweight (over 112 to 115 pounds)	not more than 3 pounds	8 oz.

Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2006 (August 2005), LR 36:

## **Chapter 7. Mixed Technique Events**

### **§705. Mixed Technique Ring Rules**

A. - C.6. ...

7. There must not be any obstruction on any part of the fence surrounding the area in which the unarmed combatants are to be competing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Boxing and Wrestling Commission, LR 34:1606 (August 2008), amended LR 35:53 (January 2009), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:

### **§725. Promoters**

A. Promoters will strictly adhere to rules and regulations as set forth in the General Rules of this Title located in §§101 through 135, with special attention given to §108 (Medical Requirements) and §123 (Ringside Physicians).

B. Only the fighter, his trainer, and chief seconds shall enter the fenced off area around the ring or cage. Any other member of the contestants entourage who enters the fenced off area for any reason shall be ejected from the event.

C. Promoters must register shows with a recognized national registry seven days prior to any event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Boxing and Wrestling Commission, LR 34:1606 (August 2008), amended LR 35:53 (January 2009), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:

### **§737. Mixed Technique Event Exhibition Rules**

A. MTE Exhibitions shall be conducted using §705 Professional Mixed Technique Rules above with the following modifications.

A.1. - B. ...

C. Acts Constituting Fouls. In addition to those listed under §719, Subsections A through C (Fouls):

1. - 1.a. ...

b. Repealed.

2. illegal techniques while on the ground:

a. in the event that the referee feels that the two fighters in the ring are mismatched to the point where the contest is not fair, then he shall immediately stop the fight at that point. Any matchmaker or promoter who arranged that fight shall be subject to immediate suspension of their license by the attending commission member as the commission deems the mismatching of amateur fighters to present an immediate danger to the public and the fighters;

b. the referee has as his number one concern the welfare of the fighters and shall conduct himself and the fight at all times with the understanding that the fighters are amateur fighters and are not to be subjected to undue punishment, which will require stoppages much sooner than those in a professional mixed technique event. Any referee who permits an amateur fighter to absorb undue punishment or grossly fails to stop a fight in a timely manner shall be subject to immediate suspension by the attending

commission member as the commission deems that unnecessary injury of amateur fighters to present an immediate danger to the public and the fighters;

c. in the event that the commission member in attendance feels that the promoter has violated any of the rules of this Section concerning mixed technique exhibitions or has submitted forms or paperwork to the commission that are fraudulent, or determines that the fighters were paid any gratuity, the commission member shall, at the close of the fight issue a summons to that promoter to appear before the commission at the next scheduled meeting to determine whether his license shall be suspended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Boxing and Wrestling Commission, LR 34:1606 (August 2008), amended LR 35:53 (January 2009), amended by the Office of the Governor. Boxing and Wrestling Commission, LR 36:

### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972.

### **Public Comments**

Interested persons are invited to submit comments, views or positions, on these proposed Rule, in writing to Alvin Topham, Chairman, Louisiana State Boxing and Wrestling Commission, 1125 Mobile Street, Lake Charles, LA 70605 or by facsimile (337) 475-4888.

Alvin Topham  
Chairman

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Boxing and Wrestling Standards**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will have no impact on expenditures related to state or local governmental units other than the minimal cost to publish in the Louisiana Register.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will have no impact on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will result in increase costs to the extent that promoters who choose to increase health and accidental death benefits to \$100,000 from the current minimum of \$10,000. Any increase in these limits would result in an increase in costs to promoters in an amount not to exceed \$350 per event if an event coordinator is deemed necessary.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition or employment as a result of this rule change.

Addie Fields  
Recording Secretary  
1001#060

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Public Defender Board

#### Capital Defense Guidelines (LAC 22:XV.Chapter 9)

Editor's Note: This Notice of Intent is being repromulgated due to a submission error. The original Notice of Intent is printed on pages 2880-2892 of the December 20, 2009 *Louisiana Register*.

The Public Defender Board, a state agency within the Office of the Governor, proposes to adopt LAC 22:XV.Chapter 9, as authorized by R.S. 15:148. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 307 of the 2007 Regular Session of the Louisiana Legislature directed the Public Defender Board to adopt rules creating mandatory: 1) statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state; and 2) qualification standards for public defenders that ensure that the public defender services are provided by competent counsel. Said standards are to ensure that public defenders are qualified to handle specific case types which shall take into consideration the level of education and experience that is necessary to competently handle certain cases and case types, including capital cases. In compliance with the directives of Act 307, the Public Defender Board proposes to adopt these capital defense guidelines.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part XV. Public Defender Board

#### Chapter 9. Capital Defense Guidelines

#### §901. Objective and Scope of Guidelines

##### A. Objective of the Guidelines and Performance Standards

1. The objective of these guidelines and associated performance standards is to create mandatory statewide guidelines and performance standards for the defense of capital cases as required by R.S. 15:148(B)(10) in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence in a manner that is uniformly fair and consistent throughout the state.

2. The guidelines are principally intended to focus on the structure of capital defense service delivery. The associated performance standards are principally intended to focus on the tasks involved in the delivery of capital defense services by attorneys, investigators, mitigation specialists and supervisors.

3. These guidelines are intended to adopt and apply the guidelines for capital defense set out by the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, its associated Commentary and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*. In these guidelines, the ABA guidelines have been adapted and applied to meet the specific needs and

legal requirements applicable in Louisiana while seeking to give effect to the intention and spirit of the ABA guidelines.

4. These guidelines and associated performance standards are intended to provide capital defenders and responsible agencies with specific guidance on the performance of their functions and to allow the state public defender and the Public Defender Board to more efficiently evaluate the delivery models and performance of the capital defense services provided throughout the state.

##### B. Scope of the Guidelines

1. These guidelines and associated performance standards apply from the moment the client is taken into custody and extend to all stages of every case in which the state may be entitled to seek the death penalty, including pre-indictment proceedings, the initial and ongoing investigation, pretrial proceedings, trial, motion for new trial, sentencing, the direct appeal, state and federal post-conviction review, clemency proceedings, and any connected litigation. The guidelines and performance standards also apply to any services rendered prior to the client being taken into custody, such as where counsel assists the client in surrendering.

2. Unless specifically mentioned, these guidelines shall apply only in the case of capital defendants who are eligible for public defender services. The word "defendant" is used broadly to describe the client at all stages of every case covered by these guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### §903. Adoption and Implementation of Capital Representation Plans

##### A. Adoption of Capital Representation Plans

1. The state public defender shall adopt and implement a plan formalizing the means by which high quality legal representation in death penalty cases is to be provided in accordance with these guidelines (the Louisiana Capital Representation Plan).

2. Each district public defender (or regional director where a service region has been established) shall adopt and implement a plan formalizing the means by which high quality legal representation in death penalty cases is to be provided in accordance with these guidelines and the Louisiana Capital Representation Plan (the District Capital Representation Plan).

3. The state public defender may publish a form for the District Capital Representation Plan.

##### B. Capital Representation Plans to Provide for Compliance with the Guidelines

1. The Louisiana Capital Representation Plan and the District Capital Representation Plans shall set forth how each jurisdiction will conform to each of these guidelines and meet the standards established by the performance standards.

##### C. Capital Representation Plans to Provide for Zealous Advocacy

1. All elements of the Capital Representation Plan should be structured to ensure that counsel defending death penalty cases are able to do so free from political influence, judicial interference, conflicts of interest and under conditions that enable them to provide zealous advocacy in

accordance with the Louisiana Rules of Professional Conduct. The Capital Representation Plans should be structured to allow these goals to be achieved in a cost-effective and fiscally responsible manner.

2. While ensuring that the performance of the defense function is free from judicial interference, defense counsel should:

a. maintain adherence to the Rules of Professional Conduct;

b. manifest a professional attitude toward the judge, opposing counsel, witnesses, jurors, and others in the courtroom; and

c. should not knowingly disobey an obligation under the rules or rulings of a court, except for an open refusal based on an assertion that no valid obligation exists.

D. Capital Representation Plans to Provide for Case Supervisor in Every Case

1. The Capital Representation Plan shall provide that for each capital case a case supervisor will be specifically identified. Each case supervisor must be certified as lead counsel under these guidelines.

2. Where lead counsel in the case is an employee of a public defender office or defender organization, the supervisor will be the director of that office or organization, or a person he or she assigns to that role.

3. Where lead counsel in the case is acting under contract, the supervisor will be the director of the contracting agency, or a person he or she assigns to that role.

4. Where the director of an office, organization or contracting agency is counsel in the case, the supervisor shall be the trial level compliance officer or a person assigned by the trial level compliance officer.

5. The case supervisor is not counsel in the case but is responsible for assisting and supporting each attorney to provide representation in compliance with these guidelines. The case supervisor must monitor the representation in the case for compliance with these guidelines and associated performance standards.

6. The case supervisor may make recommendations to the defense team, resolve workload questions pursuant to §919 and report non-compliance with the guidelines to the district public defender and state public defender. The case supervisor does not have the authority to act on behalf of the defendant or to direct members of the defense team to take any action or refrain from taking any action.

E. Transitional provisions for capital representation plan

1. Each district public defender and the state public defender is to complete and submit to the board a capital representation plan within three months of the adoption of these guidelines by the board. The state public defender is to provide technical assistance to district public defenders to assist in completing their capital representation plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§905. Designation of Responsible Agencies**

A. Responsibility for Ensuring High Quality Legal Representation in Capital Cases

1. Subject to R.S. 15:165, the district public defender is responsible within his or her jurisdiction for:

a. ensuring that each capital defendant in the jurisdiction receives high quality legal representation

consistent with these guidelines and associated performance standards at trial level;

b. ensuring the continuing cooperation of trial counsel and defense team members with appellate and post-conviction counsel;

c. recruitment and development of attorneys to represent capital defendants at trial level, including assisting attorneys in meeting certification requirements;

d. assigning the attorneys who will represent the defendant throughout the trial level of the case, except to the extent that the defendant has private attorneys and has not sought assistance as a partially indigent defendant;

e. monitoring the performance of all attorneys providing trial level capital representation in the jurisdiction;

f. periodically reviewing the roster of qualified attorneys in his or her jurisdiction and recommending to the state public defender the withdrawal of certification from any attorney who fails to provide high quality legal representation consistent with these guidelines; and

g. investigating and maintaining records concerning complaints about the performance of attorneys providing representation in death penalty cases within his or her jurisdiction and taking appropriate corrective action without delay.

2. The district public defender may assign these responsibilities to the state public defender by agreement with the state public defender and upon execution of an appropriate District Capital Representation Plan. Where a service region is established, the responsibilities vested in the district public defender in these guidelines may be assigned to the regional director as a part of a service delivery method for the region established under R.S. 15:160(B)(7).

3. The state public defender is responsible for:

a. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at post-sentencing, appellate level and upon any remand;

b. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at state post-conviction level;

c. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at clemency level;

d. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at trial level where defense services are provided by a capital defense organization acting pursuant to a contract with the board;

e. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at trial level where responsibility is assigned to the state public defender by agreement with the district public defender or where such responsibility is assigned pursuant to R.S. 15:165;

f. investigating and maintaining records concerning complaints about the performance of attorneys providing

representation in cases for which he or she has responsibility under §905.A and take appropriate corrective action without delay; and

g. performing or ensuring the performance of all the duties listed in Subsection E.

#### B. Independence from the Judiciary

1. The district public defender, regional director and state public defender are to be independent of the judiciary and they, not the judiciary or elected officials, shall select lawyers for specific cases.

#### C. Delegation of Responsibility for Ensuring High Quality Legal Representation in Capital Cases

1. If the district public defender, regional director or state public defender assigns, contracts or delegates performance of its responsibilities under this Section, it shall clearly identify within the Capital Representation Plan to whom responsibility is assigned, contracted or delegated.

2. Performance of responsibilities under this Section may only be assigned, contracted or delegated to:

a. the state public defender;

b. a defender organization, that is:

i. a jurisdiction-wide capital trial office, relying on staff attorneys, members of the private bar or both to provide representation in death penalty cases. This may include a regional death penalty center as described in R.S. 15:164;

ii. a jurisdiction-wide capital appellate and/or post-conviction defender office, relying on staff attorneys, members of the private bar or both to provide representation in death penalty cases; or

iii. an independent authority, that is, an entity run by defense attorneys with demonstrated knowledge and expertise in capital representation.

3. Regardless of any contract, assignment or delegation (save for an assignment of responsibility to the state public defender or the regional director) the district public defender, regional director or state public defender remain ultimately responsible for ensuring that the responsibilities described under this Section are met.

#### D. Conflict of Interest

1. In any circumstance in which the performance of a duty under this Section would result in a conflict of interest, the relevant duty should be performed by the state public defender, a defender organization or independent authority free of a conflict of interest and identified for this purpose in the Capital Representation Plan.

2. The Capital Representation Plan shall identify an effectual system to identify and resolve such conflicts. The system will include provisions to ensure that no organization or person responsible for representing a capital defendant shall be responsible for assigning or supervising counsel for another defendant with an antagonistic defense.

3. In order to ensure that the state public defender's office remains free of conflicts in all cases, no attorney who holds a formal role in the office of the state public defender shall represent a capital defendant in the jurisdiction during the term of his or her service.

#### E. Duties of State Public Defender

1. The state public defender should, in accordance with these guidelines, perform the following duties:

a. recruit and certify attorneys as qualified to be appointed to represent defendants in death penalty cases;

b. draft and periodically update rosters of certified attorneys;

c. periodically publish the certification standards, the procedures by which attorneys are certified and how attorneys are assigned to particular cases in each district;

d. assign the attorneys who will represent the defendant at each stage of every case where the state public defender has responsibility for ensuring that the capital defendant receives high quality legal representation under §905.A;

e. monitor the performance of all attorneys and defender organizations providing representation in capital proceedings;

f. periodically review the roster of qualified attorneys and withdraw certification from any attorney who fails to provide high quality legal representation consistent with these guidelines;

g. conduct, sponsor, or approve specialized training programs for attorneys representing defendants in death penalty cases;

h. recruit and support the professional development of mitigation specialists in the state of Louisiana; and

i. ensure that each district public defender and regional director complies with his or her responsibilities under these guidelines and associated performance standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### §907. Case tracking of Capital Cases

A. Obligation of District Public Defender to Track All Capital Cases within Jurisdiction

1. Each district public defender should track the arrest, indictment, procedural posture and disposition in all capital cases in his or her district up to and including sentencing stage. Tracking should include the cases of those defendants who are not currently indigent. Information gathered from the tracking of capital cases is to be promptly provided to the state public defender.

2. The district public defender's obligations under this Section remain even where the district has assigned responsibility for capital representation to the state public defender.

B. Obligation of State Public Defender to Track Capital Cases Post-sentencing

1. The state public defender should track the appeal, state post-conviction, federal post-conviction and clemency proceedings of every capital case in the jurisdiction.

C. Obligation of State Public Defender to Maintain Statewide Caseload Data

1. The state public defender should maintain and make available to the Board data describing the statewide capital caseload at each stage of a capital case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### §909. Eligibility for Public Defender Services

A. Eligible for Services if Financially Unable to Secure Appropriate Representation

1. A person will be eligible for public defender services if he or she is unable, without substantial financial

hardship to himself or to his dependents, to obtain competent, qualified legal representation on his own.

2. Substantial financial hardship is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, resides in public housing, or earns less than two hundred percent of the federal poverty guideline. A defendant is presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is housed in a mental health facility.

3. Capital defendants not falling below the presumptive threshold will be eligible to receive public defender services if their particular circumstances, including seriousness of the charges being faced, monthly expenses, local private counsel rates for counsel qualified to handle capital cases, would result in a "substantial hardship" were they to seek to retain private counsel. Relevant considerations may include such factors as income or funds from employment or any other source, including public assistance, to which the accused is entitled, property owned by the accused or in which he or she has an economic interest, outstanding obligations, the number and ages of dependents, employment and job training history, and level of education. Release on bail alone shall not disqualify a person from eligibility.

4. A capital defendant meeting the above criteria will be eligible for public defender services notwithstanding that he or she has retained counsel through a collateral funding source or on a pro bono basis. A capital defendant who has retained counsel at his own expense may be eligible for public defender services subject to careful examination of his or her financial status and the possibility of seeking an order under R.S. 15:176.

#### B. Determination of Eligibility

1. The district public defender shall be responsible for determining eligibility for public defender services in each case in his or her jurisdiction. Should the district public defender be prevented from making such a determination by a conflict of interest, responsibility for the determination of eligibility will transfer to the state public defender.

2. The determination of eligibility shall not be subject to judicial or political interference.

3. A determination of eligibility in capital cases should be made as soon as possible after arrest or after the issue of eligibility has been raised.

4. Once a capital defendant is determined to be eligible for public defender services he or she shall be presumed to remain eligible through each stage of the capital case unless a formal determination of ineligibility is made.

5. Where, as a result of a change of circumstances or new information, the district public defender or state public defender believes that a defendant may not be eligible, the question of eligibility shall be investigated and a new determination made.

6. A capital defendant may be found to be eligible for public defender services notwithstanding a judicial finding that the defendant is not indigent pursuant to R.S. 15:175.

#### C. Eligibility in Capital Cases Presumed until Investigation of Eligibility Complete

1. All capital defendants are presumed eligible for public defender services until the completion of any

investigation of eligibility and a formal determination of ineligibility.

#### D. Finding of Ineligibility

1. Where a capital defendant is found to be ineligible for public defender services under this Section, the defendant may apply to the court for a determination of indigency under R.S. 15:175. If found by the court to be indigent, the defendant shall be deemed to be eligible for the purposes of this Section.

2. No capital defendant shall be found ineligible where he or she is able to provide some but not all of the funds necessary for an adequate defense. Instead, the defendant should be found eligible and an application for partial reimbursement pursued under R.S. 15:176.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### §911. Assignment of Counsel

##### A. Assignment of Specific Attorneys to Each Capital Case

1. In each capital case the person or organization responsible for assigning counsel pursuant to §905 shall assign specific attorneys to each case and not an office, organization or group of attorneys. At least one appropriately certified attorney shall be assigned as lead counsel and at least one appropriately certified attorney shall be assigned as associate counsel. Additional counsel may be assigned when necessary or appropriate and assignments may be changed, subject to maintaining continuing compliance with these guidelines.

##### B. Assignment to be Consistent with Requirements of Guidelines

1. An attorney may only be assigned if he or she is currently certified in the appropriate role, is conflict free, meets the workload requirements of these guidelines and can be compensated in accordance with these guidelines. Assignments of attorneys must be made so as to meet the requirements of these guidelines, including §913.

##### C. Assignment of Counsel to Eligible Defendant Desiring Public Defender Services

1. Counsel shall be assigned to each defendant who is eligible to receive public defender services at the earliest possible opportunity following arrest and, wherever possible, prior to appearance under C. Cr. P. art. 230.1. Counsel shall be assigned no later than 48 hours after the time for appearance under C. Cr. P. art. 230.1.

2. Where an eligible capital defendant is arrested outside of Louisiana, the district public defender in the district in which the offense is alleged to have occurred will immediately assign counsel.

3. Counsel may be assigned prior to arrest where the capital defendant is an existing client of a public defender service or where the defendant seeks assistance in surrendering him or herself to police.

4. Counsel shall not be assigned to a defendant who indicates that he does not wish to receive public defender services. With the consent of the defendant, public defender services may be provided while a defendant considers whether he or she desires to receive public defender services.

##### D. Assignment of Counsel prior to Formal Finding of Eligibility

1. Where counsel is assigned prior to a formal finding of eligibility it is counsel's responsibility to immediately confer with the defendant to confirm his or her desire to receive public defender services unless this has already occurred.

#### E. Assignment of Counsel in Conflict Cases

1. Assignments in cases where there exists a conflict of interest will occur in accordance with the Capital Representation Plan and §905. Any person or organization unable to perform the assignment function due to a conflict of interest must immediately act to ensure that the appropriate non-conflicted authority may make the assignment.

#### F. Assignment of Counsel in Overflow Cases

1. Assignments in cases where the responsible person or organization is unable to assign counsel due to a lack of appropriately qualified and available counsel will occur in accordance with the Capital Representation Plan. Any person or organization unable to make an assignment due to a lack of available counsel must immediately act under the Capital Representation Plan to ensure that the appropriate authority may make the assignment.

#### G. Self-representation and Assignment of Standby Counsel

1. Where a capital defendant seeks to proceed without counsel, counsel is obliged to continue to represent the client in accordance with these guidelines and the performance standards until the motion for self-representation is granted. This obligation will include: investigating the competency of the client; the capacity of the client to knowingly, voluntarily and intelligently waive the right to the assistance of counsel; and the capacity of the client to engage in self-representation. Where appropriate, counsel should oppose the defendant's motion. Where appropriate, counsel should seek review of a trial court decision granting a capital defendant's motion for self-representation.

2. Where a capital defendant is proceeding pro se and the court permits or requires standby counsel, attorneys shall be assigned under these guidelines. Where attorneys are assigned to act as standby counsel a defense team shall be assembled consistent with §913 and be prepared to assume representation of the defendant should the court so order. Standby counsel has an ongoing obligation to monitor the capital defendant's competency, the quality of his waiver and his ability to represent himself and to bring such matters to the attention of the court where appropriate.

#### H. Unavailability of Counsel for Assignment

1. Where the persons or organizations identified in the capital representation plan responsible for assignment of counsel are unable to assign counsel, the district public defender and the state public defender shall be immediately notified. Where the district public defender and the state public defender are also unable to assign counsel, the state public defender shall immediately cause to be filed with the relevant court a notice that counsel cannot be assigned at this time.

2. In such cases, the state public defender shall assign capably certified counsel for the limited purpose of protecting the capital defendant's rights, including pursuing a halt of the prosecution.

3. Where counsel cannot be assigned to a case under this Section, the state public defender and district public

defender shall have an ongoing responsibility to identify counsel suitable for assignment to the case.

#### I. Transitional Provisions for Assignments Made Prior to Adoption of Guidelines

1. The district public defender or state public defender, as appropriate, shall review all assignments of attorneys in open capital cases made within his or her jurisdiction prior to the adoption of these guidelines by the board. Within six months of the adoption of these guidelines the district public defender or state public defender, as appropriate, shall take such action as is necessary to ensure that the assignment of attorneys in each such case has been brought into compliance with these guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### **§913. The Defense Team and Supporting Services**

#### A. Minimum Components of the Defense Team

1. For all capital defendants, a defense team that will provide high quality legal representation must be assembled.

a. The defense team should consist of no fewer than two attorneys certified in accordance with §915 of these guidelines (with at least one qualified as lead counsel), an investigator, and a mitigation specialist;

b. The defense team must include individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's life history;

c. At least one member of the team must have specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma;

d. The two attorneys, investigator and mitigation specialist described above are the minimum components of any defense team. The emphasis in assembling a defense team is to ensure that the team possesses the skills, experience and capacity to provide high quality representation in the particular case.

e. Additional team members will be appropriate in many cases in order to:

i. reflect the seriousness, complexity or amount of work in a particular case;

ii. meet legal or factual issues involving specialist knowledge or experience;

iii. ensure that the team has the necessary skills, experience and capacity available to provide high quality representation in the particular case;

iv. provide for the professional development of defense personnel through training and case experience; and

v. for any other reason arising in the circumstances of a particular case.

#### B. Expert, Investigative and Other Ancillary Professional Services

1. Counsel shall have access to the assistance of all expert, investigative, and other ancillary professional

services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings.

2. The state public defender shall provide funds for the assistance of experts, including mitigation specialists, and extraordinary investigative services. Such services will be provided by persons independent of the government and confidentiality of communications with the persons providing such services is to be maintained throughout the funding process. Funds for ordinary investigative services will be provided by the district public defender unless responsibility for the case under §905 is vested in the state public defender.

#### C. Defendants with Retained or Pro Bono Counsel

1. A capital defendant who is eligible for public defender services under §909 is entitled to public funds for the minimum components of a defense team and expert, investigative and other ancillary services notwithstanding that he or she has retained or pro bono counsel.

2. In such a case the district public defender, regional director or state public defender, as appropriate, shall be responsible for supplementing existing services available to the defendant to meet the requirements of this Section.

3. In such a case, the district public defender, regional director or state public defender, as appropriate, shall be responsible for ensuring that the capital defendant receives high quality legal representation in his or her capital case. In the absence of specific agreement with the district public defender, regional director or state public defender, counsel assigned to the case shall operate as lead counsel.

4. If a retained attorney becomes unable to continue representing a capital defendant because the defendant or any third party cannot fulfill the terms of the financial agreement between the attorney and the defendant or any third party, that attorney is not eligible to be appointed to represent the defendant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### **§915. Qualifications of Defense Counsel**

#### A. Certification Standards Intended to Ensure High Quality Legal Representation

1. The certification standards and mechanisms established by these guidelines should be construed and applied in such a way as to further the overriding goal of providing each client with high quality legal representation.

#### B. Goals of Certification Standards

1. In formulating certification standards, the Public Defender Board seeks to insure:

a. that every attorney representing a capital defendant has:

i. obtained a license or permission to practice in the state of Louisiana;

ii. the skills, experience and capacity available to provide high quality capital defense representation;

iii. demonstrated a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases; and

iv. satisfied the training requirements set forth in §923;

b. that the pool of defense attorneys as a whole is such that each capital defendant in Louisiana receives high quality legal representation. Accordingly, the certification standards are meant to insure that the pool includes sufficient numbers of attorneys who have demonstrated:

i. substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;

ii. skill in the management and conduct of complex negotiations and litigation;

iii. skill in legal research, analysis, and the drafting of litigation documents;

iv. skill in oral advocacy;

v. skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;

vi. skill in the investigation, preparation, and presentation of evidence bearing upon mental status, including mental retardation;

vii. skill in the investigation, preparation, and presentation of mitigating evidence;

viii. skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and

ix. skill in maintaining a strong working relationship with a capital defendant.

#### C. Standard Process for Certification

1. Certification is available for the roles of Trial Lead Counsel, Trial Associate Counsel, Appellate Lead Counsel, Appellate Associate Counsel, Post-Conviction Lead Counsel, or Post-Conviction Associate Counsel.

2. Attorneys seeking certification must submit a detailed application to the state public defender with the overall purpose of establishing their experience and knowledge in each of the categories in §915.B.1.b, as well as the minimum requirements for the particular role for which they seek certification as outlined in §915.D, and have satisfied the training requirements outlined in §923.

3. The information in an application for certification shall include:

a. to the extent possible, a list of all capital cases in which the attorney has served as defense counsel, including the name of the defendant, judicial district court, trial judge, prosecuting attorneys, co-counsel, the result or verdict and any reported appellate decisions in the case;

b. any other experiences the attorney believes will establish his or her qualifications, including but not limited to:

i. non-capital trial or appellate experience;

ii. experience as a public defender or prosecutor, or as an attorney in a capital defense organization;

iii. observation of complete capital trials; and/or

iv. extensive research and/or training in the field of capital defense;

c. at least two samples of substantial written legal work product including analysis of complex legal issues, preferably filed in a capital case, prepared by the attorney at the trial, appellate or post-conviction level;

d. the names and phone numbers of two district court judges (or appellate judges in the case of appellate

certification) or capital defense attorneys familiar with the attorney's work as an advocate;

e. written statement by the applicant describing the extent and source of relevant proficiencies in each of the categories in §915.B.1.b;

f. an authorization to permit the state public defender to obtain CLE records for the attorney both prior to and during any period of certification;

g. a signed undertaking that the attorney will comply with the continuing obligations of certified counsel detailed in §915.I;

h. a listing of the number of active trial, appellate or post-conviction cases the attorney has, and any non-active cases that may become active in the next year;

i. any other relevant background or specializations which might inform the state public defender of the attorney's qualifications for certification or the assignment of particular cases;

j. proof that the attorney is licensed to practice in Louisiana or has been granted permission to practice in a capital case or cases in Louisiana;

k. information relevant to assessing the applicant's professional, physical and mental fitness for certification, including:

i. any findings of professional misconduct in this or any other jurisdiction, including any findings of contempt of court;

ii. any matter affecting the applicant's physical health that would substantially impair the applicant's capacity to meet the requirements of certified capital counsel in these guidelines and associated performance standards; and/or

iii. any matter affecting the applicant's mental health that would substantially impair the applicant's capacity to meet the requirements of certified capital counsel in these guidelines and associated performance standards.

4. The state public defender may develop and publish an application form. Where an applicant is unable to supply one or more of the items required above, the application should provide an explanation for this and the state public defender may waive the requirement or require other material to be supplied in lieu of that listed in this Section.

#### D. Minimum Experience Requirements for Certification

1. The following minimum required experience levels apply for each of the roles for which certification is available:

a. Qualified Trial Lead Counsel shall:

i. have at least five years of criminal trial litigation experience;

ii. have prior experience as lead counsel in no fewer than nine jury trials tried to completion; of these, at least five must have involved felonies or two must have involved the charge of murder; and

iii. have prior experience as lead counsel or associate counsel in at least one case in which the death penalty was sought and was tried through the penalty phase or have prior experience as lead counsel or associate counsel in at least two cases in which the death penalty was sought and where, although resolved prior to trial or at the guilt phase, a thorough investigation was performed for a potential penalty phase.

b. Qualified Trial Associate Counsel shall:

i. have at least three years of criminal trial experience; and

ii. have prior experience as lead counsel in no fewer than three felony jury trials which were tried to completion, including service as lead or associate counsel in at least one homicide trial.

c. Qualified Appellate Lead Counsel shall:

i. have at least five years of criminal appellate litigation experience;

ii. have prior experience within the last three years as lead counsel in the appeal of no fewer than three felony convictions in federal or state court; and

iii. have prior experience within the last three years as lead counsel or associate counsel in the appeal or post-conviction application, in federal or state court, of at least one case where a sentence of death was imposed; and

iv. be familiar with the practice and procedure of the Louisiana Supreme Court in the appeal of capital cases; the practice and procedure of the United States Supreme Court in the application for writs of certiorari in capital cases; and the law controlling the scope of and entitlement to state post conviction and federal habeas corpus review.

d. Qualified Appellate Associate Counsel shall:

i. have demonstrated adequate proficiency in appellate advocacy in the field of felony defense; and either have at least:

(a) three years of criminal trial or appellate litigation experience; or

(b) two years experience as a full time attorney at a capital defense organization in Louisiana.

e. Qualified Post-Conviction Lead Counsel shall:

i. have at least five years of criminal post-conviction litigation experience; and

ii. have demonstrated clear competence and diligence in representation provided as:

(a) counsel of record for defendant in at least five felony post-conviction relief/habeas corpus proceedings (including at least one murder conviction); and

(b) counsel of record for defendant as lead or associate counsel in two death penalty related post-conviction/habeas corpus proceedings in which petition has been filed; and

iii. have been lead counsel in a capital post-conviction proceeding which had an evidentiary hearing or been lead counsel in at least two felony post-conviction evidentiary hearings or trials; and

iv. be familiar with the substantive law and the practice and procedure of the courts of Louisiana in the review of capital post-conviction applications; and

v. be familiar with federal habeas corpus statutory law, practice and procedure, particularly including federal review of state convictions in capital cases.

f. Qualified Post-Conviction Associate Counsel shall:

i. have demonstrated adequate proficiency in post-conviction/habeas advocacy in the field of felony defense and either:

(a) have at least three years of criminal trial, appellate or post-conviction/habeas litigation experience; or

(b) have at least two years experience as a full time attorney at a capital defense organization in Louisiana.

g. Waiver of Experience Qualification Due to Equivalent Alternative Experience

i. Having appropriate regard to the goals of these certification standards, the state public defender may waive formal compliance with the minimum experience requirements contained in this Section where satisfied that the applicant has equivalent alternative experience. However, in all cases lead counsel must have been admitted to the bar for at least five years.

E. Minimum Training Requirements for Certification

1. Prior to certification, the applicant must have satisfactorily completed within the preceding two years a comprehensive training program as described in §923.B. This requirement is non-waivable, though counsel not meeting this requirement will be eligible for provisional certification.

F. Consideration of Certification Applications

1. Subject to §915.H, the decision to certify or not certify an applicant under §915 rests in the sole discretion of the state public defender and shall not be subject to political or judicial interference.

2. The state public defender shall promptly review each application, investigate the contents of the submission, make any further enquiries that will assist in deciding whether certification is appropriate, and determine whether the attorney should be certified as Trial Lead Counsel, Trial Associate Counsel, Appellate Lead Counsel, Appellate Associate Counsel, Post-Conviction Lead Counsel, Post-Conviction Associate Counsel or provisionally certified under §915.G.

3. The state public defender may request that the applicant submit any further information required to allow a full consideration of the application.

4. The state public defender shall not certify any applicant unless he or she:

- a. is licensed or has been granted permission to practice in Louisiana;
- b. meets the requirements of §915.D and E; and
- c. has submitted an application complying with §915.C, including an undertaking to comply with the requirements of §915.I.

5. In determining whether certification is appropriate, the state public defender shall have regard to:

- a. the goals of certification;
- b. the experience of the applicant;
- c. the prior training of the applicant;
- d. the proficiency of the applicant in the provision of capital defense services; and
- e. the extent to which the applicant has the commitment, skill and capacity to provide zealous advocacy and high quality legal representation in the defense of capital cases.

6. If the applicant is not certified, or not certified for the role requested, the state public defender shall inform him or her of the reasons for the denial of certification in writing. The applicant shall be given the opportunity to supplement the initial application or, where appropriate, to submit a further application upon meeting any deficiency.

G. Provisional Certification

1. An attorney whom the state public defender has found to be not appropriate or eligible for certification in a particular role may be granted provisional certification in

that role subject to such conditions as may be set by the state public defender.

2. Conditions attached to provisional certification may include but are not limited to:

- a. undertaking and satisfactorily completing further training as determined by the state public defender;
- b. working with resource counsel assigned by the state public defender;
- c. working only on a specific case or cases;
- d. working only with a specific attorney or attorneys as determined by the state public defender;
- e. limiting responsibility in work on a case to a particular area or areas as determined by the state public defender;
- f. working only as a part of a defense team that includes a member or members with a particular skill, experience or expertise as determined by the state public defender;
- g. achieving or maintaining a caseload or workload of a level and type determined by the state public defender.

3. A provisionally certified attorney shall be regarded as being certified for the purposes of §913 and Rule XXXI, La. S. Ct. Rules, but may not be assigned to any case without the prior approval of the state public defender and under circumstances that ensure that the conditions set for provisional certification are met and will continue to be met.

H. Appeal from Denial of Certification

1. After being notified of the final decision of the state public defender, an attorney who has been denied certification can make a written request within 21 calendar days of the notification to appeal the decision to the board or an appeals review committee designated by the board. The decision of the board or appeals review committee shall not be subject to judicial or political interference.

I. Obligations of Certified Counsel

1. It will be a continuing obligation of certified counsel to:

- a. comply with these guidelines and associated performance standards;
- b. comply with the Louisiana Rules of Professional Conduct;
- c. maintain caseloads and workloads within the limits established by the guidelines established by the Louisiana Public Defender Board, except as specifically authorized by the state public defender;
- d. cooperate with case monitoring and case reviews by the case supervisor, district public defender and state public defender;
- e. attend and successfully complete continuing capital legal education as described in §923.C;
- f. notify the state public defender of any change of address or contact information;
- g. immediately notify the state public defender of any change in his or her licensure or permission to practice in the state of Louisiana;
- h. immediately notify the state public defender of any change in the information contained in his or her application for certification relating to professional, physical, mental fitness to be certified as capital counsel;
- i. promptly respond to any request for information from the state public defender, regional director or district public defender, as appropriate, relevant to the attorney's

performance as capably certified counsel or satisfaction of the obligations of capably certified counsel; and

j. notify every court in which he or she is counsel in a capital case of any reduction in the level or extent of his certification.

#### J. Maintaining Certification

1. Certified attorneys must apply to the state public defender for re-certification by January 31 of each calendar year following the year of initial certification under these guidelines.

2. When applying for re-certification, counsel must certify continued compliance with the obligations established under the guidelines, including the requirement for continuing capital legal education. The attorney must advise the state public defender of any previously undisclosed failure to comply with these guidelines.

3. The state public defender shall publish an application form for re-certification. The state public defender shall distribute re-certification application forms to all certified counsel each year.

4. Following submission of an application for certification, an attorney will remain certified until such time as the state public defender determines to re-certify or not re-certify the attorney.

5. The state public defender will promptly consider each application for re-certification and determine whether to re-certify the attorney. Consideration of re-certification and any appeal from the decision will be handled in a manner consistent with §915.F, G and H. An attorney will remain provisionally certified during any appeal from a refusal to re-certify the attorney.

6. Where an attorney fails to timely apply for re-certification, he or she shall be reduced to provisional certification status. The state public defender shall investigate the failure to apply for re-certification and either de-certify the attorney or consider an out of time application for certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### §917. Certification Transitional Provision

A. Re-certification for Attorneys on the Roster Prior to the Promulgation of these Guidelines

1. All attorneys on the Public Defender Board's Capital Certification Roster at the time of the adoption of these guidelines shall be deemed to be certified under these guidelines on the date of adoption subject to the following.

a. All attorneys deemed to be certified under this Section must apply for certification under these guidelines within six months of the guidelines being adopted by the board or be de-certified. An attorney de-certified in this way may subsequently apply for certification.

b. Attorneys deemed to be certified under these guidelines must satisfy the comprehensive training program requirement contained in §923.B within two years of the adoption of these guidelines. Where an attorney fails to satisfy this provision he or she shall be immediately reduced to provisional certification status and the state public defender shall determine whether the attorney should be de-certified.

c. The state public defender will inform any court in which the attorney is acting for a capital defendant of the de-certification of the attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### §919. Workload

A. Workloads Should be Low Enough to Allow High Quality Legal Representation

1. Workloads of defense team members shall be maintained at a level that enables counsel to provide each client with high quality legal representation in accordance with these guidelines and associated performance standards, including the ability of counsel to devote full time effort to the case as circumstances will require.

B. Caseloads and Workloads

1. Attorneys shall maintain workloads in compliance with any policy or rule adopted by the board under R.S. 15:148(B)(1)(a).

2. Pending the adoption by the board of a policy or rule under R.S. 15:148(B)(1)(a), attorneys shall maintain caseloads in compliance with Chapter 12, Louisiana Standards on Indigent Defense.

C. Responsibility for Maintaining Appropriate Workload Levels

1. The state public defender, regional director and district public defender shall be responsible for ensuring that the attorneys in each case for which they have responsibility under §905 are in compliance with this Section and shall assist the attorneys to achieve and maintain appropriate workloads.

2. Each supervisor of a capital attorney has a responsibility to ensure that the attorneys he or she supervises maintain compliance with this Section and assist the attorneys to achieve and maintain appropriate workloads.

3. Each attorney has an individual responsibility to ensure that he or she maintains compliance with this Section.

D. Obligation to Refuse New Cases in Excess of Workload Limits

1. An attorney should not be assigned new case assignments that will result in his or her workload exceeding that allowed by §919.A after accepting a capital case.

2. Where an attorney believes that accepting a new case will result in a workload in violation of §919.A, the attorney must bring this to the attention of the case supervisor for reasonable resolution of the question of professional duty created. Where the question of whether the workload is excessive is reasonably arguable, the responsibility to ensure compliance with these guidelines rests with the case supervisor. Where the workload is excessive, this may include but is not limited to ensuring that no new assignment is made; reallocating other responsibilities; and providing additional personnel on new or existing cases.

3. Where the attorney believes that the resolution of the question has been inadequate he or she must raise the question progressively with the district public defender, regional director and state public defender, as appropriate, for reasonable resolution.

4. Where the question of whether the workload is excessive is not reasonably arguable or where the attorney has exhausted all available avenues for a reasonable resolution of the question and no reasonable resolution has been provided, the attorney should decline to accept any new cases.

5. An attorney should decline to accept new cases, rather than withdraw from existing cases, if the acceptance of a new case will result in his or her workload exceeding that allowed by §919.A.

E. **Obligation to Respond to Excessive Workloads**

1. Where an attorney believes that his or her workload is in violation of §919.A, the attorney must bring this to the attention of the case supervisor for reasonable resolution of the question of professional duty created. Where the question of whether the workload is excessive is reasonably arguable, the responsibility to ensure compliance with these guidelines rests with the case supervisor.

2. Where a case supervisor becomes aware that an attorney's workload may exceed that allowed by §919.A, he or she shall immediately investigate the attorney's workload and take appropriate steps to bring the attorney's workload into compliance with this Section. Such action may include:

- a. assigning additional members to the defense team on particular cases to reduce the workload demands on the attorney;
- b. assisting the attorney in moving to withdraw from a particular case or cases;
- c. counseling the attorney to withdraw from a case or cases that are not the subject of supervision;
- d. assisting the attorney in managing non-representational responsibilities by reassigning those responsibilities or providing additional support for the attorney in meeting those responsibilities.

3. Where the attorney believes that the resolution of the question of excessive workload has been inadequate, he or she must raise the question progressively with the district public defender, regional director and state public defender, as appropriate, for reasonable resolution.

4. Where the question of whether the workload is excessive is not reasonably arguable and where the attorney has exhausted all available avenues for a reasonable resolution of the question and no reasonable resolution has been provided, the attorney should move to withdraw from the case or cases in which capital defense services in compliance with these guidelines and associated performance standards cannot be provided. The state public defender must be provided reasonable notice prior to the filing of any motion to withdraw under this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 15:148.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§921. Monitoring of Certified Counsel; Removal**

A. **Monitoring Performance of Defense Counsel**

1. The state public defender is responsible for monitoring the performance of all capital defense counsel to ensure that each client is receiving high quality legal representation.

2. The district public defender is responsible for monitoring the performance of all capital defense counsel in his or her jurisdiction, when not precluded from doing so by a conflict of interest.

3. Where there is evidence that an attorney is not providing high quality legal representation consistent with these guidelines and associated performance standards, the state public defender and district public defender, as appropriate, should take necessary action to protect the interests of the attorney's current and potential clients.

B. **Complaints Procedure**

1. The state public defender shall establish and publicize a complaints procedure.

C. **Capital Case Review**

1. Whenever a capital case has been closed at trial, appellate, state post-conviction, federal post-conviction or clemency level the state public defender shall receive a briefing from counsel regarding the course of the representation. The state public defender may publish a form for the provision of case briefings.

2. At the discretion of the state public defender and in every case in which a death sentence is imposed or affirmed, post-conviction relief is denied or a defendant is executed, a case review committee shall be convened by the state public defender to review the course of the representation. The purpose of the review is to gather information to assist in the ongoing provision of high quality representation in capital cases.

D. **Periodic Review of Certification and Service Provision**

1. The state public defender shall review the roster of attorneys certified on an annual basis to ensure that attorneys listed remain capable of providing high quality legal representation.

2. The state public defender shall review the service delivery of each district public defender and defender organization each year to ensure that each remains capable of providing high quality legal representation.

E. **Decertification**

1. The state public defender may decertify, reduce the role for which counsel is certified or reduce to provisional certification any attorney who has: failed, without good cause, to meet the requirements of these guidelines and associated performance standards; has failed, without good cause, to satisfy the obligations of certified counsel under §915.I; has become unsuitable for capital certification under §915; has failed to continue to demonstrate that he or she has the required legal knowledge and skill necessary for capital defense representation; or has failed to continue to demonstrate that he or she is willing to apply that knowledge and skill with appropriate thoroughness and preparation.

2. The state public defender may also remove an attorney from the roster if, as part of a periodic review of the roster, the state public defender determines that a smaller roster of attorneys will better serve the goals of ensuring the best possible representation of indigent capital defendants and of delivering quality services in the most efficient and cost-effective manner.

3. Where counsel is decertified the state public defender shall ensure that each court in which the attorney represents a capital defendant is advised of this fact. The responsible agency under §905 will assign new counsel to represent the defendant in order to ensure that the defendant receives representation in compliance with these guidelines and the associated performance standards. Counsel who are decertified shall not be paid for work performed after

decertification except for such work as is necessary to provide for an effective transition of case responsibility to successor counsel.

4. Where there is substantial evidence that an attorney has failed to provide high quality legal representation, the attorney shall be reduced by the state public defender to provisional certification and the state public defender shall promptly investigate the circumstances of the representation.

5. Following the investigation, the state public defender may restore the attorney's original level of certification, reduce the role for which the attorney is certified, confirm the provisional certification or decertify the attorney.

6. Where there is substantial evidence that a systemic defect in a defender organization has caused the office to fail to provide high quality legal representation, the state public defender and district public defender shall ensure that the organization does not receive additional assignments of cases. The state public defender shall promptly investigate the existence of a systemic defect.

7. Following the investigation the state public defender may direct that the defender organization continue to receive case assignments, require that remedial action be taken or take action to ensure that the defender organization does not receive any further assignments and that existing clients receive representation consistent with these guidelines and associated performance standards.

8. Any attorney or defender organization that may be the subject of an adverse decision under §921.E shall be provided written notice of any action being contemplated and an opportunity to respond in writing before any final action is taken.

9. Any attorney or defender organization adversely affected by a decision under §921.E may appeal that decision in the manner described in §915.H.

#### F. Protection of Zealous Advocacy

1. The state public defender must ensure that this Section is implemented consistently with §903, so that an attorney's zealous representation of a client cannot be cause for the imposition or threatened imposition of sanctions pursuant to this Section.

#### G. Inherent Regulatory Authority of Louisiana Supreme Court

1. Nothing in this Section is intended to derogate from the inherent regulatory authority of the Louisiana Supreme Court provided for in Article V, Section 5 of the Constitution of Louisiana regarding the regulation of the practice of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### §923. Training

#### A. Funding of Capital Defense Trainings

1. Funds should be made available by the Public Defender Board for the effective training, professional development, and continuing education of capital defense attorneys, investigators and mitigation specialists.

#### B. Comprehensive Training Program

1. Attorneys seeking to qualify for capital defense certification shall satisfactorily complete a comprehensive training program, approved by the state public defender, in the defense of capital cases. Such a program should include,

but not be limited to, presentations and training in the following areas:

- a. relevant state, federal, and international law;
- b. pleading and motion practice;
- c. pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
- d. jury selection;
- e. trial preparation and presentation, including the use of experts;
- f. the investigation, preparation, and presentation of mitigating evidence;
- g. investigation, preparation, and presentation of evidence bearing upon mental status, including mental retardation;
- h. ethical considerations particular to capital defense representation;
- i. preservation of the record and of issues for post-conviction review;
- j. counsel's relationship with the client and his family;
- k. post-conviction litigation in state and federal courts;
  1. the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.
  2. The state public defender shall develop and provide a comprehensive training program to assist attorneys in meeting the mandatory training requirements established by §923.B. The state public defender shall offer the comprehensive training program on at least an annual basis.

#### C. Continuing Capital Legal Education

1. Attorneys seeking to remain on the certification roster must continue to attend and successfully complete specialized training program approved by the state public defender that focuses on the defense of death penalty cases. Attorneys must complete at least eighteen hours of training at an approved course or courses every two years.

#### D. Continuing Professional Education—Non-attorneys

1. All non-attorneys wishing to be eligible to participate on defense teams should receive continuing professional education appropriate to their areas of expertise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### §925. Funding and Compensation

#### A. Responsibility for Funding Capital Defense

1. Except as otherwise provided in these guidelines, the district public defender shall be responsible for funding capital defense services in each case for which he or she has responsibility under §905. The state public defender shall be responsible for funding capital defense services as provided for in these guidelines and in each case for which he or she has responsibility under §905.

2. Where a district public defender or the state public defender has insufficient funds to provide for capital defense services for which it has responsibility, the Board shall have responsibility for making available sufficient funds to permit the funding of capital defense services consistent with these guidelines and associated performance standards.

3. Where the board is unable to provide sufficient funds to permit representation consistent with these

guidelines and associated performance standards it shall be the obligation of defense counsel in each case so affected to take all necessary steps to preserve and protect the defendant's rights until adequate funding is provided, including, in a trial level case, move for a halt of prosecution.

#### B. Allocation of Funds

1. Within the constraints of available funds, the board, the state public defender and each district public defender responsible for capital representation shall endeavor to make adequate budgetary allowance for the funding of capital defense services consistent with these guidelines and associated performance standards and in a cost-effective and fiscally responsible manner.

2. The board, the state public defender and each district public defender responsible for capital representation must balance the responsibility to fund capital representation with the obligation to fund representation in other cases and within the constraints provided by available funds, must endeavor to provide adequate funds for all required indigent defense services and make budget allocations accordingly.

3. Similarly, the board, the state public defender and each district public defender responsible for capital representation must balance the responsibility to fund capital representation across all of the districts in the state and at each stage of capital representation and must endeavor to provide adequate funds for all required capital defense services and make budget allocations accordingly.

4. Where the demand for capital defense services exceeds the available funds, the board, the state public defender and each district public defender shall ensure that funds are allocated consistent with the following principles:

a. funds allocated for and necessary for services other than capital defense services shall not be re-allocated to capital defense services, provided that the budget has reasonably sought to balance funding for the capital and non-capital funding responsibilities of the board, state public defender and district public defender;

b. funds allocated for different districts, regions or stages of representation in capital cases shall not be re-allocated to another district, region or stage of representation provided that the budget has reasonably sought to balance funding for all required capital defense services;

c. funds should be made available to capital cases only to the extent that each case can be funded at a level that can provide for representation consistent with these guidelines and associated performance standards. Capital cases should not be partially funded at a level below that necessary to achieve compliance with these guidelines and associated performance standards;

d. notwithstanding the above, where a capital case cannot be adequately funded, funds may be used for the limited purposes of:

i. preserving the rights of the defendant, including the right to a halt of prosecution; and

ii. minimizing any irremediable prejudice arising from the lack of adequate funds, for example, by preserving available evidence;

e. within each stage of representation (trial, appeal, post-conviction, clemency), funds are to be allocated and expended on cases in the order in which the obligation to provide representation began, or the order in which the need for particular funds has been presented; and

f. decisions regarding the allocation of funds are to be made free from political or judicial interference.

#### C. Compensation of Capital Defense Counsel

1. Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation. Salary and other compensation should be comparable to other positions of similar stature throughout the state.

2. Flat fees, caps on compensation, and lump-sum contracts with attorneys are improper in death penalty cases.

3. No distinction between rates for services performed in or out of court should be maintained.

4. Periodic billing and payment should be available to capital defense counsel.

#### D. Compensation of Non-attorney Team Members

1. Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases. Salary and other compensation should be comparable to other positions of similar stature throughout the state.

2. No distinction between rates for services performed in or out of court should be maintained.

3. Periodic billing and payment should be available to non-attorney team members and experts.

#### E. Roster of Presumptively Reasonable Compensation

1. The state defender shall draft and publish a roster of presumptively reasonable rates of compensation for defense counsel, investigators, mitigation specialists and experts across the state, making provision for different rates for different regions of the state where necessary.

#### F. Funding in Unusually Protracted or Extraordinary Cases

1. Additional compensation should be available in unusually protracted or extraordinary cases.

#### G. Reasonable Incidental Expenses

1. Counsel and members of the defense team should be fully reimbursed for reasonable incidental expenses.

#### H. Documentation of Resource and Funding Allocation

1. It shall be the responsibility of counsel to request all resources and funds necessary to provide representation consistent with these guidelines and the performance standards. Counsel must ensure that all requests for and decisions regarding the allocation of resources and funds are clearly documented in the client file.

2. The board, the state public defender and each district public defender shall also ensure that all requests for and decisions regarding the allocation of resources and funds are clearly documented and preserved.

3. The requirement to clearly document decisions regarding resource and funding allocations operates even where counsel is also the person responsible for making the decision, for example, where the district public defender is lead counsel. Where counsel's obligation to the client creates a conflict with the obligation to make a decision regarding resource and funding allocations, the decision may be referred to the state public defender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### §927. Establishment of Performance Standards

#### A. Establishing Performance Standards

1. The Public Defender Board shall establish performance standards for all counsel in death penalty cases.

2. Pending the adoption of these performance standards, counsel in death penalty cases should meet the standards adopted by the American Bar Association.

#### B. Standards Shall Operate as a Benchmark for Performance and Qualifications

1. The standards of performance should be formulated and interpreted so as to insure that all counsel provide high quality legal representation in capital cases in accordance with these guidelines. The performance standards shall serve as a benchmark when assessing the performance of counsel.

#### C. Interim Performance Standards

1. Pending the formal adoption of capital performance standards by the board the following shall, with any necessary modification to reflect Louisiana nomenclature and prevailing legal obligations, be deemed to operate as relevant performance standards under these guidelines:

a. Guidelines 10.2-10.15.2 of the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*; and

b. State of Louisiana Performance Standards for Criminal Defense Representation in Indigent Criminal Cases in the Trial Court (adopted June 20, 2006).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by helping to ensure that indigent parents and/or their children accused of capital offenses will receive quality legal representation, thereby helping the family unit during a time of crisis.

#### Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety,

environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### Public Comments

Interested persons who wish to submit data, views, comments, or arguments may do so by writing to Jean M. Faria, State Public Defender, 500 Laurel Street, Suite 300, Baton Rouge, LA 70801. Such writings will be accepted through 2 p.m., Monday, February 22, 2010.

Jean M. Faria  
State Public Defender

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Capital Defense Guidelines

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to the state or local government units, as the objective of the proposed rule is to increase the quality of representation without increasing costs or the Louisiana Public Defender Board's table of organization. Training will be provided at no cost to public defender attorneys; however, it is conceivable that District Public Defenders may incur some costs associated with travel (i.e., mileage, meals and lodging) if public defender attorneys working for them are required to travel to attend training.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no impact on state or local revenue collections.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to adopt provisions establishing mandatory guidelines and performance standards for the defense of capital cases. It is anticipated that implementation of this proposed rule will have minimal economic cost for public defender attorneys who desire to handle capital cases and meet additional training requirements; however, the cost is indeterminable since there is no way to determine how many public defender attorneys will obtain such certification and, further, that training will be provided at no cost to such public defender attorneys. However, in the event District Public Defenders do not pay travel costs for public defender attorneys who work for them, it is conceivable that the individual public defender attorneys may incur some travel costs if they are required to travel to attend training.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed amended rule should not affect competition or employment.

Jean M. Faria  
State Public Defender  
0912#033

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**  
**Department of Health and Hospitals**  
**Board of Examiners of Psychologists**

Training and Credentials, Certificate of Prescriptive Authority, Supervised Practice, Continuing Education, Licenses, Temporary Licensure, Supervision of Unlicensed Assistants, Disciplinary Action  
(LAC 46:LXIII. Chapters 3, 4, 7, 8, 9, 10, 11, and 15)

Editor's Note: This Notice of Intent, originally published in the December 20, 2009 issue of the *Louisiana Register*, is being republished to correct a submission error.

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners of Psychologists intends to and amend LAC 46:LXIII.Chapters 3, 7, 8, 9, 10, 11 and 15, and repeal LAC 46:LXIII.Chapter 4.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXIII. Psychologists**

**Chapter 3. Training and Credentials**

**§301. School**

- A. ...
- B. is an institution accredited by a regional body that is recognized by the U.S. Department of Education;
- C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353 and R.S. 37:2356.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 6:489 (August 1980), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 36:

**§303. Doctoral Programs in Psychology**

- A. - C.1. ...
- 2. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists in an applied area of psychology recognized by the board.
- 3. - 7. ...
- 8. The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology, in an applied area of specialization recognized by the board.
- 9. The program shall be an internal degree program (as opposed to an external degree program unless it is either designated by the Association of State and Provincial Psychology Boards (ASPPB) and the National Register or it is accredited by the American Psychological Association.)

10. - D.2.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353 and R.S. 37:2356.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 6:489 (August 1980), amended LR 13:180 (March 1987), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 15:87 (February 1989), LR 27:1895 (November 2001), LR 36:

**§305. Specialty Areas**

A. In applied healthcare areas such as counseling, clinical, clinical neuropsychology, and school psychology, preparation shall include early and continuing involvement of students in applied healthcare settings. Such experiences shall occur at two levels: practicum and internship.

1. The practicum level is an earlier, prerequisite phase of involvement, usually for academic credit, often on campus, with typical time commitment of 8 to 16 hours per week. Practicum settings should provide supervised training in interviewing, appraisal, modes of intervention and research skills or other skills appropriate to the student's level of experience and area of specialization. A minimum of 300 hours of practicum experience should precede the internship. This should include at least 100 hours of direct client contact and at least 50 hours of scheduled individual supervision.

2. The following will be used to identify organized psychology internship training programs.

a. An organized training program, in contrast to supervised experience or on-the-job training, is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose is assuring breadth and quality of training.

b. The internship agency had a clearly designated staff psychologist who was responsible for the integrity and quality of the training program and who was actively licensed/certified by the State/Provincial Board of Examiners in Psychology.

c. The internship agency had two or more psychologists on the staff as supervisors, at least one of whom was actively licensed as a psychologist by the State/Provincial Board of Examiners in Psychology.

d. Internship supervision was provided by a staff member of the internship agency or by an affiliate of that agency who carried clinical responsibility for the cases being supervised. At least half of the internship supervision was provided by one or more psychologists.

e. The internship provided training in a range of assessment and treatment activities conducted directly with clients seeking psychological services.

f. At least 25 percent of trainee's time was indirect client contact (minimum 375 hours).

g. The internship included a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also have been at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with clinical issues; co-therapy with a staff person including discussion; group supervision, additional individual supervision.

h. Training was post-clerkship, post-practicum and post-externship level.

i. The internship agency had a minimum of two interns at the internship level of training during the applicant's training period.

j. Trainee had title such as "intern," "resident," "fellow," or other designation of trainee status.

k. The internship agency had a written statement or brochure which described the goals and content of the internship, stated clear expectations for quantity and quality of trainee's work and was made available to prospective interns.

l. The internship experience (minimum 1,500 hours) was completed within 24 months.

B. In applied non-healthcare areas such as educational, developmental, experimental, social, or industrial-organization, psychology, internship training may take the form of post-doctoral supervised experience as defined in the regulations of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353 and R.S. 37:2356.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 19:1323 (October 1993), LR 36:

#### **§307. Clinical Neuropsychology**

A. - C.1.c. ...

d. specialty internship in clinical neuropsychology, followed by the completion of a formal post-doctoral fellowship (one year minimum) in clinical neuropsychology, or the equivalent of one full year (2,000 hours) of post-doctoral experience in clinical neuropsychology under the supervision of a qualified clinical neuropsychologist (as defined here and in LAC 46:LXIII.307.C.2, 3, and 4). The majority of these hours must involve clinical neuropsychological assessment, and some portion of the remaining hours should be related to rehabilitation of neuropsychological deficits. The supervision, as defined above, should involve a minimum of one hour of face-to-face supervision a week, though additional supervisory contact may be required during training phases and case discussions. The 2,000 total hours must be obtained in no more than two consecutive years;

C.1.e. - C.2.c. ...

d. In addition to whatever remedial didactic training is necessary, the candidate for respecialization in clinical neuropsychology, will complete either a formal, one year post-doctoral fellowship training program, or the equivalent of one full year (2,000 hours) of supervised experience in clinical neuropsychology as defined in LAC 46:LXIII.307.C.1.d.

C.2.e. - C.3.a. ...

i. diplomat status (ABPP/ABCN or ABN) in neuropsychology;

C.3.a.ii. - C.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353 and R.S. 37:2356.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 19:1323 (October 1993), amended LR 36:

### **Chapter 4. Certificate of Prescriptive Authority**

#### **§401. Preface**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 31:70 (January 2005), repealed LR 36:

#### **§403. Application for Certificate of Prescriptive Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 31:70 (January 2005), amended LR 32:1228 (July 2006), LR 33:458 (March 2007), LR 34:1406 (July 2008), repealed LR 36:

#### **§405. Limits of Practice**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 31:71 (January 2005), repealed LR 36:

#### **§407. Documentation of Physician Consultation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 31:71 (January 2005), repealed LR 36:

#### **§409. Prescribing Practices of a Medical Psychologist**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 31:72 (January 2005), repealed LR 36:

#### **§411. Continuing Professional Education**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 31:72 (January 2005), repealed LR 36:

#### **§413. Annual Renewal of the Certificate of Prescriptive Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 31:73 (January 2005), repealed LR 36:

#### **§415. Complaint Procedure**

Repealed effective January 1, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 31:73 (January 2005), repealed LR 36:

### **Chapter 7. Supervised Practice Leading toward Licensure**

#### **§703. Duration and Setting of Supervised Practice**

A. Two years of full-time (4,000 hours) supervised and documented experience shall be required for licensure. Up to one year full-time (2,000 hours) of an acceptable internship may be applied to this requirement, however all remaining supervision must be post-doctoral.

A.1. - 3 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 5:249 (August 1979), amended LR 7:187 (April 1981), amended LR 13:180 (March 1987), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 29:2075 (October 2003), LR 36:

## **Chapter 8. Continuing Education**

### **§801. Preface**

A. Pursuant to R.S. 37:2357(B) each licensed psychologist is required to complete 30 hours of credit of acceptable continuing education from an acceptable sponsor as defined in this Chapter within biennial reporting periods. The continuing education requirements of psychologists are designed to promote their continued familiarization with new developments within the profession. Continuing education offerings shall be at the graduate or post-graduate level in terms of content, quality, organization, and presentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 16:769 (September 1990), amended LR 19:46 (January 1993), LR 32:1228 (July 2006), LR 36:

### **§805. Acceptable Sponsorship, Offerings and Activities**

A. The board will recognize the following as acceptable sponsors of the continuing education requirements:

1. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 16:770 (September 1990), amended LR 19:46 (January 1993), LR 22:1131 (November 1996), LR 25:1098 (June 1999), LR 32:1228 (July 2006), LR 36:

## **Chapter 9. Licensees**

### **§901. Reinstatement of Lapsed Licenses**

A. ...

B. Within two years of the lapsing of such license, the licensee may submit an application for reinstatement for board review along with the payment of a reinstatement fee equal to the current application fee and the current renewal fee. Applicants who appear for reinstatement after 1 year of the lapsing of his/her license are required to submit to a criminal background check.

C. After two years of the lapsing of such license, the licensee may submit an application for reinstatement for board review along with the payment of a reinstatement fee equal to the current application fee and the current renewal fee provided that the person is in compliance with R.S. 37:2357.A and the rules and regulations of the board. Applicants for reinstatement received after two years are required to submit to a criminal background check and oral examination.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 6:489 (August 1980), amended LR 10:795 (October 1984), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 29:2074 (October 2003), LR 33:648 (April 2007), LR 36:

## **Chapter 10. Temporary Licensure**

### **§1001. Registration of Out-of-State Psychologist**

A. Any nonresident duly licensed or certified for independent practice as a doctoral level psychologist in the state of his/her residence and which state will permit residents of this state a like and similar privilege as provided herein may, if associated with a psychologist who is a resident of the state of Louisiana and licensed under Title 37, Chapter 28 of the Louisiana Revised Statutes, practice as a psychologist for a period not to exceed 30 days in any calendar year to the same extent and manner as if licensed in this state.

B. A psychologist not licensed in Louisiana, whose license is current, unrestricted, and at the doctoral level in the jurisdiction of his/her residence, must properly register with the board prior to providing psychological services in Louisiana by providing to the Board:

B.1. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2365.D.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:459 (March 2007), amended LR 36:

### **§1002. Emergency Temporary Registration for Psychologists**

A. ...

B. Prior to providing professional services in Louisiana a psychologist licensed at the doctoral level in another jurisdiction of the United States, shall apply for an Emergency Temporary Registration (ETR). The application for ETR shall be made available via the board website or mailed upon request.

C. - D. ...

E. A psychologist not licensed in Louisiana, whose license is current, unrestricted, and at the doctoral level in the jurisdiction of his/her residence in the United States, and properly registers with the board may gratuitously provide psychological services if:

1. ...

2. the psychologist complies with the Louisiana Licensing Law for Psychologists R.S. Title 37, Chapter 28, the *Louisiana Administrative Code*, Title 46, Part LXIII and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skills, training, and ability; and

3. ...

F. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:769(E).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:459 (March 2007), amended LR 36:

## **Chapter 11. Supervision of Unlicensed Assistants in Providing Psychological Services**

### **§1103. Responsibilities of Supervisors**

A. - C. ...

D. An ongoing record of supervision shall be maintained which details the types of activities in which the assistant is engaged and the level of competence in each. This record shall be kept in such form as may be prescribed by the board.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 5:250 (August 1979), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 36:

## **Chapter 15. Rules for Disciplinary Action**

### **Subchapter A. Applicability; Processing Complaints**

#### **§1501. Applicability**

A. These rules shall be applicable to any action of the Louisiana State Board of Examiners of Psychologists (board) to withhold, deny, revoke or suspend any psychologist's license on any of the grounds set forth in R.S. 37:2359 or under any other applicable law, regulation or rule, when such action arises from a complaint as defined in this section.

B. These rules shall not be applicable to the licensure of psychologists pursuant to R.S. 37:2356.

C. Unless otherwise provided by law, the board may delegate its authority and responsibility under these rules to a committee of one or more board members, to a hearing officer, or to other persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 9:461 (July 1983), amended LR 12:833 (December 1986), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 36:

#### **§1503. Complaints**

A. A complaint is defined as the receipt of any information by the board indicating that there may be grounds for disciplinary action against a psychologist, or any other individual, under the provisions of Title 37, Chapter 28 of the LA Revised Statutes, or other applicable law, regulation or rule.

B. Upon receipt of a complaint, the board may initiate and take such action as it deems appropriate.

C. Complaints may be initiated by the board, by any licensed psychologist or by any other person.

D. Upon receipt of complaints from other persons, the board will forward its Request for Investigation form to said person(s). Ordinarily, the board will not take additional action until the form is satisfactorily completed.

1. Except under unusual circumstances, the board will take no action on anonymous complaints.

2. If the information furnished in the Request for Investigation form is not sufficient, the board may request additional information before further considering the complaint.

E. - F ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 9:461 (July 1983), amended LR 12:833 (December 1986), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 36:

#### **Family Impact Statement**

The Board of Examiners of Psychologists hereby issues this Family Impact Statement as set forth in R.S. 49:972. The proposed amendments and adoption of the rules related

to Training and Credentials, Certificate of Prescriptive Authority, Supervised Practice Leading toward Licensure, Continuing Education, Licenses, Temporary Licensure, Supervision of Unlicensed Assistants in Providing Psychological Services, and Rules for Disciplinary Action of psychologists are implemented to safeguard the public welfare of this state and will have no known or foreseeable impact on the stability of the family; authority and rights of parents regarding the education and supervision of their children; functioning of the family; family earnings and family budget; behavior and personal responsibility of children; or, the ability of the family or a local government to perform the function as contained in the proposed rule.

#### **Public Comments**

Interested persons may submit written comments to Jaime T. Monic, Executive Director, 8280 YMCA Plaza Drive, Building 8-B, Baton Rouge, LA 70810. All comments must be submitted by 12:00 p.m., February 14, 2010.

Jaime T. Monic  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Training and Credentials, Certificate of Prescriptive Authority, Supervised Practice, Continuing Education, Licenses, Temporary Licensure, Supervision of Unlicensed Assistants, Disciplinary Action**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The estimated implementation cost for this rule includes \$640 in Fiscal Year 09-10 related to publishing the proposed and final rule in the *Louisiana Register*. The Louisiana Board of Medical Examiners (LSBME) will also incur costs of approximately \$358 to copy, certify and mail records for approximately 58 psychologists seeking prescriptive authority from the LSBME.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Act 251 of the 2009 Legislative Session removed the authority of the Louisiana State Board of Examiners of Psychology (LSBEP) to issue Certificates of Prescriptive Authority to licensed psychologists and transferred that authority to the LSBME effective on or before January 1, 2010. Beginning in Fiscal Year 10-11, there is the potential for the 58 medical psychologists who are currently certified to prescribe with LSBEP to be regulated solely by the LSBME. Medical Psychologists currently pay an annual renewal fee of \$320 to the LSBEP. As such, the LSBEP will lose a maximum amount of \$18,560 for 58 license fees at \$320 each for each psychologist not seeking a license with LSBEP beginning in Fiscal Year 10-11. Additionally, the LSBEP issues approximately 8 Certificates of Prescriptive Authority annually at a one-time fee of \$250 for each applicant. Therefore, the LSBEP will lose a maximum amount of \$2,000 for 8 certificates of prescriptive authority at \$250 each for each psychologist not seeking such a certificate with LSBEP beginning in Fiscal Year 10-11. The LSBEP will charge the LSBME a fee in the amount of \$25 per request for verification of licensure for 58 Medical Psychologist in Fiscal Year 09-10 (\$1,450) and the same fee for an estimated eight new Medical Psychologist each year (\$200) beginning in Fiscal Year 10-11. LSBME will also collect approximately \$358 to copy, certify and mail records for approximately 58 psychologists seeking prescriptive authority from the LSBME in Fiscal Year 09-10.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules will increase LSBEP fees for an estimated 58 medical psychologists statewide by a projected total amount of \$1,808 in Fiscal Year 09-10. These increased costs include approximately \$358 in copy fees (\$6.17 per medical psychologist) and \$1,450 in verification fees (\$25 per medical psychologist). Furthermore, fees for the 58 affected medical psychologist statewide will decline by an estimated total amount of \$20,360 in Fiscal Years 10-11 and 11-12 due to the rule's elimination of a requirement that these medical psychologists maintain a license with the LSBEP and pay the corresponding \$320 annual license fee. The LSBEP will assess copy fees in the amount of \$1.00 for the first page and \$.25 for each page thereafter, to each of the 58 medical psychologists requesting that their records be copied for their licensing application to the LSBME for an estimated 58 psychologists. After the initial transfer of those records pertaining to medical psychologists, the LSBEP will no longer create or maintain such records for transfer. Additionally, a \$25 verification fee will be assessed upon request for such documentation in the form of a letter, or other verification form, from the LSBEP verifying licensure and prior disciplinary actions. Additionally, those medical psychologists under the sole licensure of the LSBME will no longer be assessed a renewal fee by LSBEP. It is likely that LSBME will promulgate its own fee schedule pertaining to the licensure and renewal of medical psychologists, however that information is not available to this board.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment associated with these proposed rules.

Jaime T. Monic  
Executive Director  
1001#014

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Early and Periodic Screening, Diagnosis and Treatment Program; KIDMED Services; Claims Filing  
(LAC 50:XV.6705)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.6705 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the rules governing the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program, including those provisions governing reimbursement for the KIDMED Program, for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 29, Number 2). The bureau amended the provisions governing the reimbursement methodology to clarify the billing procedures for KIDMED services in order to conform to HIPAA compliant standardized procedure codes and to

equalize fees for all providers of EPSDT consultation services (*Louisiana Register*, Volume 30, Number 4). The bureau now proposes to amend the April 20, 2004 Rule to extend the timeframe to submit claims to comply with federal regulations governing timely claims filing.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 5. Early and Periodic Screening,**

**Diagnosis, and Treatment**

**Chapter 67. KIDMED**

**§6705. Reimbursement**

A. - B. ...

C. Timely Filing. KIDMED medical screening claims must be submitted within one year of the date of service in order to be processed for reimbursement to the provider. Claims not received within the timely filing deadline shall be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:175 (February 2003), amended LR 30:800 (April 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Public Comments**

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. He is responsible for responding to inquiries regarding this proposed Rule.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, February 25, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Early and Periodic Screening,  
Diagnosis and Treatment Program;  
KIDMED Services; Claims Filing**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will not have a programmatic fiscal impact to the state other than the cost of promulgation for FY 09-10. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY

09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than federal share for promulgation. It is anticipated that \$123 will be collected in FY 09-10 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to amend the provisions governing reimbursement in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to extend the timeframe to submit claims to up to one year from the date of service. It is anticipated that implementation of this proposed rule will not have economic cost or benefits for FY 09-10, FY 10-11 and FY 11-12.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips  
Medicaid Director  
1001#030

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

**Alternative to Disciplinary Proceedings  
(LAC 46:XLVII.3419)**

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII. §3419. Disciplinary Proceedings: Alternative to Disciplinary Proceedings in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed amendment to LAC 46:XLVII. §3419 clarifies the criteria for admission to the Recovery Nurse Program (RNP). This revision is being recommended due to the increasing number of applicants applying for admission to (RNP). This change will provide a consistent bar from nursing practice of anyone convicted of or pending any crime of violence or other crimes referenced in LAC 46:XLVII.3331.A, any crime that involves the distribution of drugs, and/or any crime that demonstrated a lack of fitness to practice nursing.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses: Practical Nurses and Registered  
Nurses**

**Subpart 2. Registered Nurses**

**Chapter 34. Disciplinary Proceedings; Alternative to  
Disciplinary Proceedings**

**§3419. Alternative to Disciplinary Proceedings**

A. - D.3.d. ...

e. has no criminal convictions or pending criminal charge pertaining to any crime or violence or other crime referenced in LAC 46:XLVII.3331.A, any crime that

involves the distribution of drugs, and/or any crime that demonstrates a lack of fitness to practice nursing.

D.3.f. - F.1.b. ...

c. complete and submit to the board a comprehensive inpatient evaluation and treatment as recommended from a board recognized treatment facility. Admission shall be within 10 days unless approved by RNP or board's professional staff;

1.d. - 2.a. ...

b. complete a relapse evaluation as directed by RNP staff. Must follow all treatment recommendations. Admission shall be within 10 days unless prior approval by RNP;

c. sign RNP agreement for four years:

d. submit to the board a Fitness for Employment Release Form completed by a board approved addictionologist prior to approval by RNP to return to work.

3. - 3.b. ...

i. complete and submit to the board a comprehensive inpatient re-evaluation and treatment as recommended by a board approved addictionologist;

ii. sign and adhere to a disciplinary RNP agreement with documented evidence of continuous sobriety for a minimum of six months;

iii. submit to the board a release form completed by a board approved addictionologist at the time reinstatement is requested;

iv. if relapse/non-compliance is reported while under suspension of license, shall be non-compliantly released by RNP and shall not be eligible to re-enter RNP for a minimum of two years.

v. board hearing or consent order will be required prior to reinstatement;

vi. submit fine/costs as imposed.

F.4. - H.2. ...

3. The board may cause to be made non-confidential the records, files and information related to successful completion of an RNP program in the event that a former participant subsequently violates the NPA or rules of the board

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), amended LR 27:728 (May 2001), LR 31:1586 (July 2005), LR 36:

**Family Impact Statement**

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed Rule amendments.

**Public Comments**

Interested persons may submit written comments on the proposed Rule until 5 p.m., February 10, 2010 to Barbara L. Morvant, Executive Director, 17373 Perkins Road, Baton Rouge, LA 70810.

Barbara L. Morvant, MN, RN  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Alternative to  
Disciplinary Proceedings**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There is no anticipated increase or decrease in expenditures or savings due to these proposed revisions except for the cost of printing which is estimated at \$300.00 in FY 2009-2010.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule will have no effect on competition and employment. Louisiana State Board of Nursing (board) created the recovering nurse program as an alternative to the disciplinary process. Current rules require that nurses participating in the recovery nurse program have no criminal convictions or pending criminal charges. The proposed rules clarify the criminal convictions or pending criminal charges that would exclude participation by recovering nurses. However, the proposed rules are unlikely to have a material impact on the supply of nurses in Louisiana.

Barbara Morvant  
Executive Director  
1001#063

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

**Faculty and Faculty Organization  
(LAC 46:XLVII.3515)**

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII. §3515 Faculty and Faculty Organization in accordance with R.S. 37:918, 37:919 and 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The proposed amendment to LAC 46:XLVII. §3515 clarifies the qualifying criteria for hiring nurse faculty. This revision is being recommended due to the increasing number of academic options that have evolved leading to an advanced degree in nursing. For example, an individual can graduate from an ASN to a Masters Program or BSN to Doctorate. These rule revisions provide for individuals who earn a graduate degree in a non-traditional option to qualify for faculty appointment without having to ask for an exception.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses:Practical Nurses  
and Registered Nurses**

**Subpart 2. Registered Nurses**

**Chapter 35. Nursing Education Programs**

**§3515. Faculty and Faculty Organization**

A - B.1. ...

2. The program head of a baccalaureate program shall hold a minimum of a graduate degree in nursing, or its equivalent, and an earned doctorate, and shall have a minimum of three years experience in the areas of nursing education and three years in clinical practice.

3. The program head of an associate degree or diploma program shall hold a minimum of a graduate degree in nursing and shall have a minimum of three years experience in the areas of nursing education and three years in clinical practice.

4. The nurse faculty shall hold a graduate degree in nursing.

5. - 6. ...

7. Exceptions to the academic qualifications for nurse faculty shall be justified and approved under board established guidelines. Such exceptions, if granted by the board shall be:

a. baccalaureate in nursing prepared individuals who are not enrolled in a graduate program in nursing are limited to a maximum two calendar years in any consecutive five year period;

b. baccalaureate in nursing prepared individuals who are enrolled in a graduate program in nursing shall be approved annually on an individual basis in accordance with current board guidelines. Exceptions may be granted to each individual for a maximum of four calendar years.

B.8. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:186 (April 1977), amended LR 10:1025 (December 1984), LR 12:678 (October 1986), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1147 (September 1993), repromulgated LR 24:1293 (July 1998), amended LR 26:2789 (December 2000), repromulgated LR 27:851 (June 2001), amended LR 33:1123 (June 2007), amended LR 36:

**Family Impact Statement**

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed rule amendments.

**Public Comments**

Interested persons may submit written comments on the proposed Rule until 5 p.m., February 10, 2010 to Barbara L. Morvant, Executive Director, 17373 Perkins Road, Baton Rouge, LA 70810.

Barbara L. Morvant, MN, RN  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Faculty and Faculty Organization**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There is no anticipated increase or decrease in expenditures or savings due to these proposed revisions except for the cost of printing which is estimated at \$300.00 in FY 2009-2010
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed changes are being implemented to enable those individuals without a Master’s Degree in Nursing but possessing a Master’s Degree in other areas and a Doctorate in Nursing to qualify for faculty positions. Currently, such individuals have to request special permission of the Board of Nursing to be an exception to the rule. By implementing these changes, the rule increases the number of individuals qualified to serve as a nurse faculty.

Barbra Morvant  
Executive Director  
1001#064

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

**Fees for Fingerprint Imprint (LAC 46:XLVII.3341)**

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII.3341. Fees for Registration and Licensure in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The proposed amendment to LAC 46:XLVII.3341 implements a fee to cover the processing fee for fingerprinting imprints that are completed at the Louisiana State Board of Nursing. This service is being provided by the Louisiana State of Nursing as an effort to streamline the volume of applicants needing fingering services.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses: Practical Nurses and Registered Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General  
Subchapter C. Registration and Registered Nurse Licensure**

**§3341. Fees for Registration and Licensure**

A. - B.2. ...

C. Fees for Fingerprint Imprint \$10.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:927.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 8:417 (August 1982), amended by the Department of Health and Hospitals, Board of Nursing, LR 14:533 (August 1988), LR 22:981 (October 1996), repromulgated LR 24:1293 (July 1998), amended LR 26:84 (January 2000), LR 30:2829 (December 2004), LR:31:2027 (August 2005), LR 36:

**Family Impact Statement**

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed amendments.

**Public Comments**

Interested persons may submit written comments on the proposed Rule until 5 p.m., February 10, 2010 to Barbara L. Morvant, Executive Director, 17373 Perkins Road, Baton Rouge, LA 70810.

Barbara L. Morvant, MN, RN  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Fees for Fingerprint Imprint**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Expenditures at the Louisiana State Board of Nursing will increase by approximately \$23,000 in Fiscal Years 2009-10 for the salary of one half full-time-equivalent licensing analyst (\$12,100), operating expenses to process finger prints (\$1,000), equipment maintenance (\$9,600), and \$300 to publish these rules in the Louisiana Register. These costs are ongoing and costs related to the licensing analyst will increase slightly in Fiscal Years 2010-11 and 2011-12.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The estimated effect on revenue collections for the Louisiana State Board of Nursing is approximately \$25,000/annually in Fiscal Years 2009-10 through 2011-12. This revenue impact was based on the following numbers of licenses issued in Fiscal Year 2008-09:

Endorsement	1,118
Examination	2,415
Students Approved for Clinicals	3,681
Total	7,214 x 1/3 = 2,402
Multiplied by the proposed fingerprinting fee \$10.00 X	
2,402 (rounded up)	
For a total of \$25,000 /annually (approximately)	

The above total is the possible statewide figure; however, the Board only anticipates serving one- third of this population that will actually walk-in the Board of Nursing office in Baton Rouge.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules require that nurses pay a \$10 fee for fingerprint imprints to the Louisiana State Board of Nursing to obtain or maintain their nursing license.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed \$10 fingerprint fee will not affect the number of applicants for nursing licenses or the supply of nurses in Louisiana.

Barbara Morvant  
Executive Director  
1001#065

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

**Exploration and Production Site Groundwater Evaluation and Remediation (LAC 43:XIX.Chapter 8)**

The Louisiana Office of Conservation proposes to amend LAC 43:XIX.Subpart 1. by adding a Chapter 8 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the State of Louisiana. The proposed amendment adds a Chapter 8 which shall apply to and provide procedures for the evaluation or remediation of groundwater conditions and potential sources that may have contributed to those conditions at oil and gas exploration and production sites pursuant to compliance with the requirements of Chapters 3, 4, 5 or 6 of LAC 43:XIX.Subpart 1 (Statewide Order No. 29-B). The amendments to the above existing Rules are intended to codify practices already being implemented under the authority of the Commissioner of Conservation.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations**

**Subpart 1. Statewide Order No. 29-B**

**Chapter 8. Exploration and Production Site Groundwater Evaluation and Remediation**

**§801. Authority**

A. These rules and regulations are promulgated by the Commissioner of Conservation pursuant to the Administrative Procedure Act as contemplated in R.S. 30:4 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 36:

**§802. Definitions**

A. The words defined herein shall have the following meanings when used in these rules. All other words so used and not herein defined shall have their usual meanings unless specifically defined in Title 30 of the Louisiana Revised Statutes of 1950.

*Commissioner*—the Commissioner of Conservation of the State of Louisiana.

*Commercial Facility*—a legally permitted E and P Waste storage, treatment and/or disposal facility which receives, treats, reclaims, stores, and/or disposes of E and P Waste for a fee or other consideration.

*Constituent*—Constituent of Concern.

*Constituent of Concern*—the parameters listed under the requirements of LAC 43:XIX.Subpart 1 applicable to the specific site conditions under review.

*DEQ*—the Louisiana Department of Environmental Quality.

*DNR*—the Louisiana Department of Natural Resources.

*EPA*—the United States Environmental Protection Agency.

*Evaluation or Remediation*—includes, but is not limited to, investigation, testing, monitoring, containment, prevention, or abatement.

*Exploration and Production Waste (E&P Waste)*—drilling wastes, salt water, and other wastes associated with the exploration, development, or production of crude oil or natural gas wells and which is not regulated by the provisions of, and, therefore, exempt from the Louisiana Hazardous Waste Regulations and the Federal Resource Conservation and Recovery Act, as amended.

*Groundwater Background Concentration*—As required by and set forth in LAC 43:XIX.303.C for parameters listed under LAC 43:XIX.311.C; or as required by and set forth in LAC 43:XIX.541 or 539.E.2 for parameters listed under LAC 43:XIX.549.E.2. As required by and set forth in LAC 43:XIX.421.A for parameters listed under LAC 43:XIX.311.C.

*MO-3*—Management Option 3 as defined in RECAP 1.1.4.

*NFA*—No further action is deemed necessary at this time.

*Oilfield Site or Exploration and Production (E&P) Site*—any tract of land or any portion thereof on which oil or gas exploration, development, or production activities have occurred, including wells, equipment, tanks, flow lines or impoundments used for the purposes of the drilling, workover, production, primary separation, disposal, transportation or storage of E and P wastes, crude oil and natural gas processing, transportation or storage of a common production stream of crude oil, natural gas, coal seam natural gas, or geothermal energy prior to a custody transfer or a sales point. In general, this definition would apply to all exploration and production operations located on the same lease, unit or field.

*Onsite*—for purposes of this Section, on the same lease or contiguous property owned by the lessor, or within the confines of a drilling unit established for a specific well or group of wells.

*RECAP*—the DEQ Risk Evaluation/Corrective Action Program.

*SERP Manual*—the DNR Site Evaluation and Remediation Procedures manual.

*Submitter*—any individual or entity providing a site evaluation or remediation plan for agency review.

*Transfer Station*—an E and P Waste receiving and storage facility, located offsite, but operated at an approved location in conjunction with a permitted commercial facility, which is used for temporary storage of manifested E&P Waste for a period of 30 days or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 36:

### **§803. Applicability**

A. This Chapter shall apply to and provide procedures for the evaluation or remediation of groundwater conditions at exploration and production sites pursuant to compliance with the requirements of Chapters 3, 4, 5 or 6 of LAC 43:XIX.Subpart 1 (Statewide Order No. 29-B) as an exception to Statewide Order No. 29-B *groundwater background concentration* requirements to address present or past uncontrolled constituent releases to the environment.

B. Agency approval of any evaluation or remediation plan and subsequent issuance of a NFA letter shall satisfy the conditions set forth in LAC 43:XIX.319.A, 431.A or 569.A for an exception to the applicable requirements.

C.1. For matters not subject to ACT 312 of 2006 or LAC 43:XIX.Subpart 1.Chapter 6, this Chapter shall apply to the evaluation or remediation of groundwater conditions where:

- a. the groundwater impact originates from an E&P Waste source; and
- b. the E&P Waste source impacting groundwater is located onsite or within the permitted boundaries of a commercial facility or transfer station.

2. If either of these two conditions not exist, the matter shall be referred to the appropriate regulatory agency.

D. For sites subject to ACT 312 of 2006 or LAC 43:XIX.Subpart 1.Chapter 6, this Chapter shall only apply to the evaluation or remediation of groundwater conditions where groundwater impact originates from an E and P Waste source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 36:

### **§804. General Requirements**

A. All documentation submitted to the agency pursuant to these regulations shall adequately demonstrate compliance with the conditions set forth in the “Louisiana Department of Natural Resources Exploration and Production Site Evaluation and Remediation Procedures Manual (SERP manual)” authorized by the commissioner and effective upon final promulgation of this Chapter.

B. Where applicable and practicable, the SERP Manual shall include site evaluation and remediation protocol and procedures established in conformance with the latest revision of the DEQ Risk Evaluation/Corrective Action Program (RECAP) document.

C. The SERP Manual shall at a minimum provide for procedures to:

1. perform comprehensive site assessments;
2. sample, test and evaluate soils and groundwater;
3. establish background groundwater or soil conditions;
4. fully delineate the horizontal and vertical extent of impacts to soil or groundwater;
5. develop and implement remediation plans;
6. issue NFAs;
7. properly notify landowners;
8. properly file courthouse conveyance records;
9. address chlorides and other applicable Statewide Order 29-B salt parameters;
10. allow composite sampling for screening purposes only; and
11. specifically address hydrocarbon, metals and other constituents found in E and P Waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 36:

### **§805. Agency Review and Approval**

A. All site evaluation or remediation plans or final results submitted pursuant to MO-3 assessments, or addressing air, surface water, water bottoms (sediments), or non-Statewide Order No. 29-B parameters shall be forwarded to DEQ for review and comment. Only said plans or final results reviewed and reported in writing by DEQ as acceptable shall be approved by the Office of Conservation. All other site evaluation or remediation plans or final results meeting the requirements of this Chapter may be approved by the commissioner or his designee without the written consent of DEQ, unless otherwise determined by the commissioner that written consent of DEQ is warranted.

B. Upon acceptance of site evaluation or remediation documentation adequately demonstrating compliance with these rules and that no further action will be necessary, the agency shall issue a letter stating that “no further action is deemed necessary at this time (NFA).”

C. These regulations and SERP manual procedures do not preclude emergency response or interim measures necessary to protect human health and the environment or to prevent significant migration of constituents of concern. These regulations and SERP manual procedures do not authorize any injury to private or public property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations, and do not authorize the migration of constituents of concern offsite to adjacent property. It is the responsibility of the submitter to ensure that risks to human health and the environment are addressed and that decisions concerning management of the release site are protective of human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 36:

#### **Family Impact Statement**

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the

proposed Rule amendments at LAC 43:VI. 103, 307 and Chapter 7 on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government are not required to perform any function contained in the proposed Rule amendment.

**Small Business Statement**

There will be no effect on small businesses.

**Public Comments**

Written comments will be accepted until 4:30 p.m., March 8, 2010, at Office of Conservation, Environmental Division, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Environmental Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. ENV 2010-01 on all correspondence.

**Public Hearing**

The Commissioner of Conservation will conduct a public hearing at 9 a.m., March 1, 2010, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953.

James H. Welsh  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Exploration and Production Site  
Groundwater Evaluation and Remediation**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No additional implementation costs (savings) to State or Local governmental units are anticipated to implement the proposed rule amendment.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no anticipated effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

No additional costs, workload adjustments, or additional paperwork will be incurred by persons or non-governmental groups as a result of implementation of the proposed rule amendment. Likewise, there are no anticipated economic benefits to persons or non-governmental groups from the implementation of the proposed rule amendment.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

There will be no effect on competition and employment.

James H. Welsh  
Commissioner  
1001#061

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Board of Private Investigator Examiners**

**Licensing of Journeyman (LAC 46:LVII.510)**

The Board of Private Investigator Examiners, in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and relative to its authority to adopt, amend or repeal rules provided by R.S. 37:3505 proposes revisions to Chapter 5 of LAC 46:LVII.

The Board of Private Investigator Examiners hereby proposes to adopt LAC 46:LVII.510, Licensing of Journeyman. This text has been added in response to the private investigator journeyman license, which the Board of Private Investigator Examiners is authorized to issue to qualified applicants, pursuant to the enactment of R.S. 37:3507.2(4).

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARD**

**Part LVII. Private Investigator Examiners**

**Chapter 5. Application, Licensing, Training,  
Registration and Fees**

**§510. Licensing of Journeyman**

**A. Definition**

*Journeyman License*—an individual license authorizing the individual to provide contract private investigator services to any agency licensed by the Board of Private Investigator Examiners.

**B. Journeyman Qualifications.** A journeyman applicant shall meet the same qualifications as an individual license holder and shall have successfully completed the 40 hour basic private investigators course and subsequent examination.

**C. Journeyman License Standards.** A journeyman license holder shall maintain a job log concerning each investigation they perform. The job log shall contain the following items:

- 1. name of managing agency;
- 2. reference;
- 3. dates investigations were performed;
- 4. total number of hours worked during the investigation.

**D. Journeyman License Application.** A journeyman license applicant shall be required to submit an affidavit acknowledging and accepting the journeyman's license limitations. Those limitations include the following:

- 1. a journeyman license holder shall only provide investigative services to agencies licensed under the Board of Private Investigator Examiners;
- 2. a journeyman license holder shall not provide direct investigative services to the general public, private businesses or government agencies.

E. Journeyman management. Each agency employing the services of a journeyman shall supervise the activities of the journeyman in the same manner they would an apprentice or individual license holder. Each agency employing the services of a journeyman shall also maintain and provide upon request of the journeyman or board, the total number of hours a journeyman worked each year.

F. Agency Fees. Fees for a journeyman license shall be equivalent to the fees for an agency license.

G. Journeyman Identification Card. The identification card of a journeyman shall have the words "Not an Agency" printed on the face of the card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505 and R.S. 37:3507.2(A)(4).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 36:

#### **Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of person regarding the education and supervision of their children? The proposed Rule will not affect the authority or rights of persons regarding the education and supervision of their children

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a Board of Private Investigator Examiners enforcement function.

#### **Public Comments**

Interested persons may submit written comments to Pat Englade, Executive Director, Board of Private Investigator Examiners, 2051 Silverside Drive, Suite 190, Baton Rouge, LA 70808. All comments must be submitted by 4:30 p.m., February 10, 2010.

Pat Englade  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Licensing of Journeyman**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule provides for establishment of a new license by the Board of Private Investigator Examiners, known as the Private Investigator Journeyman License. There will be no costs or savings to state or local governmental units resulting from this rule change

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The effect on state revenue is speculative, depending on the number of applicants that apply for the Journeyman License.

However, if 100 applicants (at \$342.25 a license) apply for the license, the Board may collect an additional \$34,525.00 a year in agency self generated funds, as a result of this new rule. There will be no effect on revenue collections of local governmental units as a result of this proposed action.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Persons applying for a Private Investigator Journeyman License will pay \$345.25 yearly for such a license.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change establishes an additional license that can be issued to qualified private investigator applicants, thereby, potentially increasing the number of private investigators and effecting competition and employment of other licensed private investigators.

Pat Englade  
Executive Director  
1001#062

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Social Services Office of Community Services**

State Central Registry—Residential Licensing  
(LAC 67:V.1103, 1105, 6503, 6705, 6955 and 7107)

The Department of Social Services, Office of Community Services, proposes to amend the Louisiana Administrative Code 67:V., Subpart 3, Child Protective Services, Chapter 11; and, Subpart 8, Residential Licensing, Chapters 65, 67, 69 and 71 effective January 1, 2010 pursuant to Act 903 of the 1997 Regular Session of the Louisiana Legislature; Act 593 of the 1999 Regular Session of the Louisiana Legislature; Act 567 of the 2003 Regular Session of the Louisiana Legislature; Acts 394 and 580 of the 2006 Regular Session of the Louisiana Legislature; and, Acts 47 and 388 of the 2009 Regular Session of the Louisiana Legislature.

The content of Subpart 3, Child Protective Services, Chapter 11, is substantially amended and reorganized. It affects the maintenance and release of records on investigations with justified/valid findings and in limited circumstances, inconclusive determinations on the state central registry; and, the maintenance of records for other investigation determinations by the Office of Community Services. The amendments to Subpart 8, Residential Licensing, Chapters 65, 67, 69 and 71 prohibits any owner, operator, current or prospective employee, or volunteer of a child care facility licensed by the department from working in the facility if the individual's name is recorded on the state central registry for a justified/valid finding of abuse or neglect, unless the Risk Evaluation Panel determines that the individual does not pose a risk to children or as permitted as a result of the appeal process.

The full text of this Proposed Rule may be viewed in the Emergency Rule section of this edition of the *Louisiana Register*.

#### **Family Impact Statement**

The impact of the proposed Rule of the family formation, stability, and autonomy has been considered. It is estimated that the proposed action will have no impact on the family.

### Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses.

### Public Comments

Interested persons may submit written comments by the close of business March 1, 2010, to Kaaren Hebert, Assistant Secretary, P.O. Box 3318, Baton Rouge, LA 70821. She is the person responsible for responding to inquiries regarding this proposed Rule.

### Public Hearing

A public hearing on the proposed Rule will be held on February 25, 2010, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 10 a.m. All interested persons will be afforded an opportunity to submit data, views, arguments, orally and in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least 7 working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

Kristy H. Nichols  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: State Central Registry Residential Licensing

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend the Louisiana Administrative Code (LAC) 67:V., Subpart 3, Child Protective Services, Chapter 11 to provide clarification on the maintenance, confidentiality, and permitted release of information on child abuse and neglect investigation determinations. There is no state or local government cost associated with this rule change.

This rule also amends LAC 67:V., Subpart 8, Residential Licensing, Chapters 65, 67, 69 and 71 to implement the provisions of Acts 47 and 388 of the 2009 Regular Session of the Louisiana Legislature. Act 47 prohibits the Department of Social Services (DSS) from employing any person whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys until a search of the state central registry has determined the individual's name is not recorded as a perpetrator, or if recorded, the Risk Evaluation Panel has determined the individual does not pose a risk to children. Act 388 prohibits any owner, operator, current or prospective employee, or volunteer of a child care facility licensed by DSS from working in the facility if the individual's name is recorded on the state central registry for a justified (valid) finding of abuse or neglect, unless the Risk Evaluation Panel determines that the individual does not pose a risk to children or as permitted as a result of the appeal process.

DSS has established a single procedure for all affected individuals to access a risk assessment evaluation through the Risk Evaluation Panel. Two Panels will be established and will be coordinated by the Risk Panel Coordinator who will be employed within the Office of Community Services (OCS), the agency responsible for the maintenance for the state central registry. The estimated cost for the Risk Panel Coordinator position is \$43,083 (\$5,648 SGF; \$37,435 IAT;) for six months

in FY 09/10; \$89,496 (SGF) for FY 10/11; and \$92,953 (SGF) for FY 11/12. This cost includes salaries, related benefits, and operating expenses. DSS will use existing funds in the department's current year appropriation to absorb this cost. In FY 10, the Office of Family Support (OFS) will transfer the agency's portion of this cost to OCS; however, in subsequent fiscal years DSS anticipates that the Department's structure will change from four agencies to one agency; therefore, funding will not have to be transferred to OCS. There is no cost associated with the Risk Evaluation Panel because it will be comprised of existing DSS employees whose salaries are already included in the Department's budget.

Information regarding this new rule along with copies of the state central registry disclosure form, risk panel evaluation form and instructions will be mailed to the 53 child residential facilities licensed by OCS at an estimated cost of \$107 (\$48 SGF; \$59 FED), which includes supplies (\$27), and postage (\$80). This cost will be absorbed within the OCS current year budget appropriation.

Additionally, owners, operators, current or prospective employees, and volunteers of child care facilities who are determined by the Risk Evaluation Panel to pose a risk to children have the right to an appeal with the Division of Administrative Law. The estimated cost of each appeal is \$887. DSS estimates that there will be 80 appeals in FY 10 at a total cost of \$70,960 (\$9,304 SGF; \$61,656 IAT) and 93 every year thereafter at a total cost of \$82,491 (SGF). OCS will enter into an MOU with the Division of Administrative Law (DAL) for the purpose of hearing any resulting appeals of the Risk Review Team's Assessment. DSS will use existing funds in the department's current year appropriation to absorb this cost. In FY 10, OFS will transfer the agency's portion of this cost to OCS.; however, in subsequent fiscal years DSS anticipates that the Department's structure will change from four agencies to one agency; therefore, funding will not have to be transferred to OCS. There is no additional cost associated with DSS employee appeals because these appeals will be handled internally through the DSS Bureau of Appeals in the Office of the Secretary.

The only other cost associated with this rule is the cost for publishing rulemaking, which is estimated to be approximately \$756 (\$340 SGF; \$416 FED), which is a one-time cost that will be absorbed within the OCS current year budget appropriation. The total cost to implement this rule change is \$114,906 (\$15,340 SGF; \$99,091 IAT; \$475 FED) for FY 10; \$171,987 (SGF) for FY 11 and \$175,444 (SGF) for FY 12.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governments as a result of this rule change.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Act 388 may result in some negligible cost to transitional living, maternity home, and child care residential facilities to print information from the DSS website and to make copies of the disclosure and risk panel evaluation forms for employees and volunteers. This rule may also affect the income of providers because under no circumstances may any owner, operator, current or prospective employee, or volunteer of a child care facility with a justified (valid) finding of abuse or neglect be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel that they do not pose a risk to children, which may require that additional staff be hired. However, DSS cannot determine the amount of this impact because the number of owners, operators, current or prospective employees, and volunteers that this rule will affect is unknown.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

Those individuals with a validated complaint deemed at risk to children will not be employed. DSS cannot determine the amount of this impact because the number of owners, operators, current or prospective employees, and volunteers that this rule will affect is unknown.

Kaaren Hebert  
Assistant Secretary  
1001#071

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Family Support**

Child Care Assistance Program—State Central Registry  
(LAC 67:III.5102, 5103, 5105, 5107, and 5109)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, (DSS) Office of Family Support (OFS), proposes to amend the Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 12, Child Care Assistance Program (CCAP), Chapter 51, Subchapter A, §§5102, 5103, 5105 and Subchapter B, §§5107, and 5109.

The department finds this amendment necessary at §§5102, 5103, 5107, and 5109 in order to add requirements to the Child Care Assistance Program for clients to participate in CCAP. In order to be eligible for CCAP, clients must participate in *Automated Child Care Time and Attendance*, an electronic system that provides accurate and timely capturing, tracking and reporting of time and attendance data utilizing finger imaging as the primary mechanism for capturing data. Some sections are being amended for clarification.

Section 5105 is being amended to include that children with special needs will be given priority status should it be necessary for a waiting list to be implemented.

Section 5107 is being amended to allow DSS to offer wage supplements to child care center staff to attend specific infant and toddler training and grants for centers to purchase infant and toddler materials and supplies and to offer an incentive to certain quality start centers with a collaborative agreement with a local educational agency to provide pre-kindergarten in the LA 4 pre-kindergarten.

Section 5109 is being amended to require that CCAP providers possess the minimum equipment necessary to operate the agency's system for capturing time and attendance data and to allow for DSS to pay greater than five days of absence in cases of a declared disaster or other special circumstances at the discretion of the Assistant Secretary.

**Title 67  
SOCIAL SERVICES  
Part III. Office of Family Support  
Subpart 12. Child Care Assistance  
Chapter 51. Child Care Assistance Program  
Subchapter A. Administration, Conditions of Eligibility,  
and Funding**

**§5102. Definitions**

*Automated Child Care Time and Attendance*—an electronic system that provides accurate and timely

capturing, tracking, and reporting of time and attendance data. This system may utilize finger imaging or IVR (Interactive Voice Response) as a mechanism for capturing this data.

*Finger Imaging*—the measurement of physical characteristics of a finger for use in personal identification.

*Full-Time Care*—authorized child care calculated to be 30 or more hours per week that is paid in units of days or half days with a maximum of 22 days per month.

\* \* \*

*Household Designee (HD)*—an adult who is designated (in writing) by the CCAP Head of Household to drop off and/or pick up the child or children from an authorized CCAP provider. In the case of an In-Home provider, this is the person to whom the provider may release the child or children when the provider leaves the home. Each household designee may be finger imaged for identity purposes.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), amended LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:1484 (July 2004), LR 31:2262 (September 2005), LR 32:1464 (August 2006) LR 36:

**§5103. Conditions of Eligibility**

A. - D. ...

E. CCAP households must participate in the system designated by the agency for capturing time and attendance. This process may include finger imaging for the head of household and their household designees. The agency will determine the maximum number of household designees allowed on a CCAP case. Finger imaging is a requirement to participate in CCAP if the provider chosen by the client utilizes this as the mechanism for capturing time and attendance. Exceptions may be granted by the Executive Director of Family Assistance or his or her designee on a case by case basis.

F. If a client chooses care in an In-Home Provider setting, the client must possess a working landline telephone.

**AUTHORITY NOTE:** Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 33:506 (March 2007), LR 34:692 (April 2008), LR 36:

**§5105. Funding Availability**

A. Louisiana's share of the national total of available funds for child care programs is based on factors determined by federal law and regulation. Funds are appropriated by Congress and allocated on an annual basis so that a limited amount of federal funding is available each year through the Child Care and Development Fund (CCDF). Therefore, a determination will be made of the number of children, or "slots," that the CCDF can pay for based on available funding.

1. The children of STEP participants shall be categorically eligible for child care benefits. The children of STEP participants whose FITAP eligibility is terminated due to earned income will be given priority status with slots available for them as long as other eligibility factors are met and funding is available.

2. Children with special needs will be given priority status should it be necessary for a waiting list to be implemented. Children with special needs will be given priority status with slots available for them as long as other eligibility factors are met.

3. After all available slots are filled; a waiting list of cases or eligible children will be established and maintained for each parish in chronological order by date of application. As slots become available, cases will be removed from the waiting list and considered for current eligibility.

a. To facilitate maintaining an active waiting list in each parish, open enrollment will be scheduled for a limited time in the months of October, January, April, and July. During open enrollment periods, children determined eligible will be added to the waiting list. At the agency's discretion additional enrollment periods may be designated.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 26:2827 (December 2000), LR 30:496 (March 2004), LR 36:

## **Subchapter B. Child Care Providers**

### **§5107. Child Care Provider**

A. The head of household, or parent/caretaker relative in the case of a STEP participant, shall be free to select a child care provider of his/her choice including center-based child care (licensed Class A centers, licensed Class A Head Start centers which provide before-and-after school care and/or summer programs, and child care centers licensed by the Department of Defense), a registered Family Child Day Care Home (FCDCH) provider, in-home child care, and public and non-public BESE-regulated schools which operate kindergarten, pre-kindergarten, and/or before and after school care programs.

B. Before payments can be made to a Class A Center, licensed Class A Head Start center, or center licensed by the Department of Defense, a center must:

1. be licensed and active in the Child Care Assistance Program (CCAP) Provider Directory;

2. complete and sign a Class A or Department of Defense provider agreement as appropriate;

3. provide complete and accurate documentation and information required for Direct Deposit; and

4. participate in the system designated by the agency for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a working internet connection at the center. A landline telephone can be substituted only if internet connection is unavailable due to no provider of service at the level required.

C. - C.1.h. ...

i. caring for no more than six children, including his own children and any other children living at his residence, who are under age 13 or age 13 through 17 if disabled.

j. participation in the system designated by the agency for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a working internet connection or a landline telephone.

C.2. - D.1.d. ...

e. possession of or access to a working telephone that can receive incoming calls and that can send outgoing calls and that is available at all times in the home in which care is being provided.

f. participation in the system designated by the agency for capturing time and attendance.

E. Before payments can be made to a public or non-public school program, the provider must:

1. be certified and active in the CCAP Provider Directory;

2. complete and sign a school program provider agreement and Form W-9;

3. be regulated by the Board of Elementary and Secondary Education (BESE) if a public school or *Brumfield vs. Dodd* approved if a non-public school;

4. provide complete and accurate documentation and information required for Direct Deposit before payments can be made to that provider; and

5. participate in the system designated by the agency for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a landline telephone.

6. verify that all children funded under the program are eligible children as defined in Part 98 of Title 45 of the Code of Federal Regulations.

F. - G.2. ...

H.1. Quality incentive bonuses are available to:

a. eligible CCAP FCDCH providers who participate in the Department of Education (DOE) Child and Adult Care Food Program. The bonus will be paid once each calendar quarter, and will be equal to 10 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund.

b. effective May 1, 2004, eligible CCAP providers who provide special care for children with special needs. This special needs care includes but it is not limited to specialized facilities/equipment, lower staff ratio, and specially trained staff. The amount of these special care needs incentive payments will be in accordance with 5109.B.1.b and 5109.B.2.b.

c. eligible child care centers that employ a teacher who attends specified infant/toddler training on a first-come, first-serve basis, on a limited basis due to one-time American Recovery and Reinvestment ACT (ARRA) funding. A maximum of 10 centers per OFS region are eligible to receive a \$2000 grant for infant/toddler materials and equipment. However, if all applications have been received and one region has less than 10 qualified or interested centers and another region has additional qualified centers that wish to participate, resources may be moved to allow full participation and benefit from the ARRA funding. The center must meet requirements and participation targets to receive the grant. Centers must apply and meet the requirements to be eligible. Eligibility will be determined by the Division of Child Care and Early Childhood Education.

d. eligible teachers who work for an eligible center as described in Subparagraph H.1.c and elect to attend this specialized infant/toddler training. Up to four infant/toddler teachers employed by the eligible center may attend. Teachers can receive wage supplements up to \$1500 for participation but must meet requirements and participation targets to receive wage supplements. Teachers must apply and meet the requirements to be eligible. Eligibility will be determined by the Division of Child Care and Early Childhood Education.

2. These bonus amounts may be adjusted at the discretion of the Assistant Secretary, based upon the availability of funds.

I. On a limited basis due to one-time American Recovery and Reinvestment Act (ARRA) funding, an incentive will be offered to certain Quality Start centers with a collaborative agreement with a local education agency to provide pre-kindergarten, specifically C. Picard Pre-kindergarten Program (LA 4). Payments will be available on a first-come, first-serve basis to up to three qualifying centers in each DSS region. The bonus will be equal to \$500 for each child included in the agreement. The collaborative agreement can be based on, but not limited to, the following criteria.

1. Head Start programs for which the school is the grantee do not qualify to be part of this program.

2. A center can receive no more than one such bonus for any state fiscal year.

3. The amount and number of centers receiving the bonus in each region may be adjusted at the discretion of the Assistant Secretary, based upon the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:

### **§5109 Payment**

A. - B.2b. ...

3. The number of days or hours authorized for payment is based on the lesser of the following:

a. the time the child is actually in care each week; or

b. the time the head of household, the head of household's spouse or non-legal spouse, or the minor unmarried parent is working and/or attending a job training or educational program and/or conducting job search, each week, plus one hour per day for travel to and from such activity; or

c. effective July 1, 2004, the time the care is actually needed and available.

C. Payment is made to the eligible child care provider after services are rendered.

D. Payment may be made to more than one provider for the same child if the combined payment does not exceed the maximum allowable per child.

E. Payment will not be made for absences of more than five days by a child in any calendar month or for an extended closure by a provider of more than five consecutive days in any calendar month. A day of closure, on a normal operating day for the provider, is counted as an absent day for the child(ren) in the provider's care. If a child authorized for full-time care attends child care less than four hours in one day, this will be counted as a half day absent and half the daily rate will be paid to the provider. No absences will be authorized for part-time care. Exception: In cases of a federal/state/locally declared emergency situation, or other special circumstances, the agency may at the discretion of the Assistant Secretary waive this absence policy.

F. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:

### **Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The Rule will positively impact the stability of the family by assisting with ensuring safety of the children in care by tracking and automating children's attendance as well as tracking who is dropping off and picking up the child.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? There will be no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? If a client chooses care in an In-Home Provider setting, the client must possess a working landline telephone. If the client does not already have a working landline telephone, additional costs will be incurred.

5. What effect will this have on the behavior and personal responsibility of children? This rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

### **Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

## Public Comments

All interested persons may submit written comments through, February 24, 2010, to Deidria W. Bolden, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

## Public Hearing

A public hearing on the proposed rule will be held on February 24, 2010, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Kristy H. Nichols  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Child Care Assistance Program State Central Registry

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 12, Chapter 51, Subchapters A and B., Child Care Assistance Program, Sections 5102, 5103, 5107 and 5109.

Section 5102 adds definitions for the Child Care Assistance Program (CCAP). Section 5103 provides the conditions of eligibility for clients and providers to participate in CCAP. Section 5105 is being amended to give children with special needs priority if a waiting list is implemented. There is no cost associated with these sections.

Section 5107 is amended to implement an Infant/Toddler Project, which will offer wage supplements to 360 child care center staff to attend specific infant and toddler training and grants for 90 child care centers to purchase infant and toddler materials and supplies. In addition, this section implements a Pre-K Diverse Delivery program to provide incentives to certain Class A licensed centers that have at least a three star rating in Quality Start who have a collaborative agreement with a local educational agency to provide the LA 4 Pre-Kindergarten Program. Payments will be available on a first-come, first-serve basis for up to three qualifying centers in each DSS region. The total cost to implement this rule change in FY 10 is \$1,244,994 for the Infant/Toddler Project and \$185,000 for Pre-K Delivery and \$764,999 and \$320,000 respectively for FY 11. One-time Federal American Recovery and Reinvestment Act funding appropriated in the agency's FY 10 budget will be used to cover these costs. The Infant Toddler Project and Pre-K Deliver program will cease in FY 12 and thereafter because ARRA funding will no longer be available to continue these initiatives.

Section 5109 is being amended to require that providers possess the minimum equipment necessary to operate the agency's system for capturing time and attendance data, to allow for DSS to pay greater than five days of absence in cases of a declared disaster or other special circumstances at the discretion of the Assistant Secretary, and to change the agency's policy to no longer pay for absences for part-time care. DSS will contract with an entity to provide an Electronic method of collecting time and attendance for child care for a 60 month period, which includes the development and maintenance of a database that accepts case files from DSS, a

provider Help Desk and web portal to provide customer services to providers participating in CCAP, Point of Service Machines and Finger Scanning equipment used for the collection of time and attendance, and detailed reporting of all time and attendance activity. The cost for this contract is estimated to be \$475,000 in FY 10 and \$2,280,000 in FY 11 and FY 12. One time Federal American Recovery and Reinvestment Act funding appropriated in the agency's FY 10 budget will be used to cover this cost. DSS cannot determine the cost associated with paying for absences in the cases of a declared disaster because the number of extra days that will be paid or the number of children that will be impacted is unknown; however, the maximum amount that will be paid for a child age 3 and older is \$3.22 per day.

DSS estimates that an annual savings of \$1,387,632 (Federal Child Care Development Block Grant Funds) will be realized in FY 11 and FY 12 from the policy change of no longer paying for absences for part-time care for 8,861 school age children at a cost of \$13.05 per month for twelve months.

The only other cost associated with this rule is the cost of publishing rulemaking, which is estimated to be approximately \$1,200 for FY 10 (Federal). This is a one-time cost that is routinely covered in the agency's budget. The net cost in FY 10 for this rule change is \$1,906,194 (FED), \$1,977,367 (FED) in FY 11, and \$892,368 (FED) in FY 12.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will have no effect on state or local revenue collections.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule would provide an economic benefit to participating Class A child care centers and child care center staff. Each participating center could receive \$2,000 for infant and toddler materials over the course of the project. The wage supplements to child care staff for participating in specific infant and toddler training could be as much as \$1,500 per person. Payments will be made in increments based on completion of training. The total of grants to centers is anticipated to be \$180,000 to approximately 90 child care centers. Each qualifying center with a LA 4 Pre-K program can receive bonus payments equal to \$500 for each child included in its collaborative agreement.

Child care providers participating in the Child Care Assistance Program (CCAP) will be required to possess the minimum equipment necessary to operate the system for automated time and attendance. Class A and Class M centers must have a working internet connection or a landline telephone if internet service is not available in their area. The cost for an internet connection is estimated to be \$30 per month or \$360 per year. Family child day care home providers and Class E (schools) will be required to have either a working internet connection or a landline telephone. The cost is estimated to be \$360 per year for the internet or \$240 per year for the landline telephone. If the provider chooses to use the landline telephone, there may be an additional one-time purchase cost of approximately \$10 for a telephone. Clients will be required to have a landline telephone if they use the services of an in-home provider. The cost to the client who does not have a landline is estimated to be \$10 to purchase the telephone and \$240 per year for telephone service.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Deidria W. Bolden  
Assistant Secretary  
1001#070

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Family Support

Child Care Licensing  
(LAC 67:III.7302, 7304, 7355 and 7357)

In accordance with provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services (DSS), Office of Family Support (OFS), proposes to amend the Louisiana Administrative Code (LAC) Title 67, Part III, Subpart 21 Chapter 73, Sections 7302, 7304, 7355, and 7357.

Pursuant to Act 388 of the 2009 Regular Session of the Louisiana Legislature, the Department of Social Services finds it necessary to adopt this Rule which prohibits any owner, operator, current or prospective employee, or volunteer of a child care facility licensed by the department from working in the facility if the individual's name is recorded on the state central registry for a justified (valid) finding of abuse or neglect, unless the Risk Evaluation Panel determines that the individual does not pose a risk to children or as permitted as a result of the appeal process. This rule is necessary to ensure the safety of children in child care centers licensed by the department.

This rule was effective by Emergency Rule effective January 1, 2010.

The text of this Notice of Intent can be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

#### Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will improve the stability of the family by providing additional enforcement measures that increase the safety and welfare of children who are in out-of-home care on a regular or consistent basis.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? There will be no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

#### Small Business Impact Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the

proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

#### Public Comments

All interested persons may submit written comments through, February 25, 2010, to Deidria W. Bolden, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

#### Public Hearing

A public hearing on the proposed Rule will be held on February 25, 2010, at the Department of Social Services, Iberville Building, Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 12:00 Noon. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Kristy H. Nichols  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Child Care Licensing

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend the Louisiana Administrative Code (LAC) 67, Part III, Subpart 21, Child Care Licensing to implement the provisions of Act 388 of the 2009 Regular Session of the Louisiana Legislature.

Act 388 prohibits any owner, operator, current or prospective employee, or volunteer of a child care facility licensed by the department from working in the facility if the individual's name is recorded on the state central registry for a justified (valid) finding of abuse or neglect, unless the Risk Evaluation Panel determines that the individual does not pose a risk to children or as permitted as result of the appeals process.

Owners, operators, current or prospective employees, and volunteers of a child care facility licensed by the department shall be required to complete a state central registry disclosure form and may request a risk assessment evaluation by completing a risk panel evaluation form. Information regarding this new rule along with a copy of the state central registry disclosure form, risk panel evaluation form and instructions will be mailed to 1,906 day care centers at an estimated cost of \$2,152 (\$1,076 SGF; \$1,076 FED), which includes printing (\$858), supplies (\$131), and postage (\$1,163). This one-time cost will be absorbed within the Office of Family Support (OFS) FY10 budget appropriation.

DSS has established a single procedure for all affected individuals to access a risk assessment evaluation through the Risk Evaluation Panel. Two Panels will be established and will be coordinated by the Risk Panel Coordinator who will be employed within the Office of Community Services (OCS), the agency responsible for the maintenance for the state central registry. The estimated cost to the Office of Family Support (OFS) for the Risk Panel Coordinator position is \$37,435 (FED) for six months in FY 10. OFS will transfer the funding for this cost to OCS in FY 10; however, in subsequent fiscal years DSS anticipates that the Department's structure will change from four agencies to one agency; therefore, funding will not have to be transferred to OCS. There is no cost associated with the Risk Evaluation Panel because the panel

will be comprised of existing departmental employees whose salaries are already included in the various DSS agencies budgets.

Owners, operators, current or prospective employees, and volunteers of child care facilities who are determined by the Risk Evaluation Panel to pose a risk to children have the right to an appeal with the Division of Administrative Law. OFS estimates that there will be 70 appeals at an estimated cost of \$61,656 (Federal) for FY 10. This cost will be absorbed within the agency's current year budget appropriation. OFS will transfer the funding for this cost to the Office of Community Services, the agency responsible for handling the appeals process. DSS anticipates that the Department's structure will change from four agencies to one agency; therefore, funding will not have to be transferred to OCS in FY 11 and 12.

The only other cost associated with this rule is the cost for publishing rulemaking and printing policy, which is estimated to be approximately \$1,260 (\$630 State; \$630 Federal). This is a one-time cost that is routinely included in the agency's budget.

The total cost to implement this rule change for FY 10 is \$102,503 (\$1,706 SGF; \$100,797 Federal). The only potential cost in subsequent fiscal years is the cost for DSS to provide any updated documents to providers. To alleviate this cost, the information will be provided on the department's website and DSS will notify providers via email when this information is available.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governments as a result of this rule change.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Act 388 may result in some negligible cost to child care providers to print information from the DSS website and to make copies of the disclosure and risk panel evaluation forms for employees and volunteers. This rule may also affect the income of providers because under no circumstances may any owner, operator, current or prospective employee, or volunteer of a child care facility with a justified (valid) finding of abuse or neglect be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel that they do not pose a risk to children, which may require that additional staff be hired. In addition, this rule could result in a cost to employees or potential employees in the form of lost income if they are terminated or not hired as a result of this rule. DSS cannot determine the amount of this impact because the number of owners, operators, current or prospective employees, and volunteers that this rule will effect is unknown.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Those individuals with a validated complaint deemed at risk to children will not be employed. DSS cannot determine the amount of this impact because the number of owners, operators, current or prospective employees, and volunteers that this rule will effect is unknown.

Deidria W. Bolden  
Assistant Secretary  
1001#069

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of the Secretary

State Central Registry, Criminal Background  
and Risk Assessment Evaluation  
(LAC 67:I.201, 203, 301, 303, 305, 307, and 309)

The Department of Social Services, Office of the Secretary, proposes to adopt LAC 67:I.Chapter 2. Criminal Background and State Central Registry Checks and Chapter 3. Risk Assessment Evaluation, pursuant to Acts 47 and 388 of the 2009 Regular Session of the Louisiana Legislature.

This Rule proposes to regulate conditions of employment for employees and potential employees with certain job duties within the Department of Social Services (DSS). The adoption of this Rule will provide an increased measure of protection and safety for minor children receiving services from the department by identifying specific individuals with certain past criminal convictions. The proposed Rule will expand the authority of DSS to require federal criminal background checks for certain prospective (new hire or transferring) DSS employees.

The Rule also establishes a risk evaluation panel (panel), its duties and procedures and an appeals process for the panel's decision. The proposed Rule prohibits the employment of employees and potential employees whose duties include investigation of child abuse or neglect, the supervisory or disciplinary authority over children, direct care of a child or performance of licensing surveys if the individual's name is recorded on the state central registry, unless a risk evaluation panel determines that the individual does not pose a risk to children. The risk assessment evaluation process will also be made available to any owner, operator, current or prospective employee, or volunteer of a child care facility licensed by the department who discloses that he is currently recorded on the state central registry for a justified (valid) finding of abuse or neglect.

The full text of this proposed Rule can be viewed in the Emergency Rule section of this edition of the *Louisiana Register*.

#### Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will have no effect on the stability of the family.

2. What effect will this have on the authority and right of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will have no effect on family earnings or budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this Rule is strictly an agency function.

#### **Small Business Impact Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Public Comments**

Interested persons may submit written comments by Thursday, February 25, 2010, to the following: Ruth Johnson, Undersecretary, Office of the Secretary, P.O. Box 3776, Baton Rouge, LA, 70821-3776. She is the person responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on the proposed Rule will be held on Thursday, February 25, 2010, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Kristy H. Nichols  
Secretary

Current or prospective employees currently named on the state central registry as a perpetrator of child abuse/neglect may request a risk assessment evaluation by completing a request form. There will be some negligible cost to the Office of the Secretary to make copies of the disclosure and risk evaluation forms to provide to approximately 350 employees. There is no additional cost associated with the Risk Evaluation Panel because the panel will be comprised of existing DSS employees whose salaries are already included in the department's budget. Current DSS employees may appeal the Risk Evaluation Panel's decision if the panel determines that the employee poses a risk to children. There is no cost associated with these appeals because the DSS Bureau of Appeals in the Office of the Secretary will handle them internally.

The only other cost associated with this rule is the cost for publishing rulemaking, which is estimated to be approximately \$840 (\$420 State; \$420 FED).

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governments as a result of this rule change

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The estimated cost to directly affected persons would be the loss of income if they are terminated or not hired due to validated complaints of child abuse or neglect if they are deemed at risk to children. DSS cannot determine the amount of this cost because the agency does not know which employees will be impacted. There will be no charge to employees or potential employees for the state central registry check or the risk assessment evaluation.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Those individuals with a validated complaint deemed at risk to children will not be employed. DSS estimates that approximately 355 individuals (350 with OCS and 5 with OFS) will be required to complete the disclosure form on an annual basis but cannot determine how many of these individuals will lose employment because of this rule.

Kristy H. Nichols  
Secretary  
1001#068

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: State Central Registry, Criminal Background and Risk Assessment Evaluation**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rule proposes to adopt the Louisiana Administrative Code (LAC) 67:I., Chapter 2. Criminal Background and State Central Registry Checks and Chapter 3. Risk Assessment Evaluation effective January 1, 2010 pursuant to Act 47 of the 2009 Regular Session of the Louisiana Legislature.

Act 47 prohibits any employee of the Department of Social Services whose job duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys from working civil service job classifications if the individual's name is recorded on the state central registry for a justified (valid) finding of abuse or neglect, unless the Risk Evaluation Panel determines that the individual does not pose a risk to children or if they are deemed not a risk through the appeals process.

### **NOTICE OF INTENT**

#### **Department of Wildlife and Fisheries Office of the Secretary**

#### **Shrimp Packaging Regulations (LAC 76:VII.373)**

The Office of the Secretary of the Department of Wildlife and Fisheries does hereby give notice of its intent to establish standards for packaging of shrimp in Louisiana for wholesale and retail sale.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishing §373. Shrimp Packaging Regulations**

A. In accordance with the provisions of R.S. 56:578.10 the following provisions shall establish the standards for packaging of shrimp in, or sold in Louisiana for wholesale and retail sale.

B. Definitions

*Gulf of Mexico Packaging*—any package or container bearing the words “Gulf of Mexico” or “Gulf USA Shrimp,” or that any way represents that the shrimp are a product of the Gulf of Mexico.

*Louisiana Packaging*—any package or container bearing the word “Louisiana” or “Louisiana Shrimp,” or that any way represents the brand name “Louisiana” or that the shrimp is a product of Louisiana.

*Shrimp*—any fresh or frozen raw shrimp, either, whole, headless, or peeled of the species, white shrimp or "common saltwater shrimp" (*Litopenaeus setiferus*), also called the "lake shrimp"; the brown shrimp (*Farfantepenaeus aztecus*); the pink shrimp (*Farfantepenaeus duorarum*); or the "sea bob" (*Xiphopeneus kroyeri*), also called "six barbes.

*United States Packaging*—any package or container bearing the word “United States,” or “USA,” or “Product of USA,” or that any way represents that the shrimp are a product of the United States.

C. No person shall knowingly possess, package, distribute, label, broker, sell, purchase, or cause to be packaged, distributed, labeled, brokered, or sold any shrimp packaged in Louisiana packaging which were not taken, harvested, or landed in Louisiana.

D. No person shall knowingly possess, package, distribute, label, broker, sell, purchase, or cause to be packaged, distributed, labeled, brokered, or sold any shrimp packaged in Gulf of Mexico packaging which were not taken, harvested or landed in the Gulf of Mexico or adjoining states of Texas, Louisiana, Mississippi, Alabama, or Florida.

E. No person shall knowingly possess, package, distribute, label, broker, sell, purchase, or cause to be packaged, distributed, labeled, brokered, or sold any shrimp packaged in United States packaging which were not taken, harvested, or landed in the United States. Shrimp landed in the United States shall not mean shrimp imported into the United States from any country other than the United States.

F. The penalty for violating any provision of this Section shall constitute a class two violation for each violation. The provisions of this Section shall not supersede any other state or federal requirements for packaging or labeling shrimp.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.10.

HISTORICAL NOTE: Promulgated in accordance with the Department of Wildlife and Fisheries, Office of the Secretary, LR 36:

**Family Impact Statement**

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

**Public Comments**

Interested persons may submit written comments on the proposed Rule to: Marty Bourgeois, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Thursday, March 4, 2010.

Robert J. Barham  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Shrimp Packaging Regulations**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs or savings to state or local governmental units are anticipated. Implementation and enforcement of the proposed rule amendment will be carried out using existing staff.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is anticipated to have no effect on revenue collection of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule defines “Shrimp” and establishes standards for the packaging of shrimp in, or sold in Louisiana for wholesale and retail sale. Shrimp packaging firms that are not currently using the standards for packaging of shrimp as defined in the proposed rule and who are currently labeling the contents of packages and containers bearing the word “Louisiana” or “Louisiana Shrimp”, “Gulf of Mexico” or “Gulf USA Shrimp” and “United States” or “USA” or “Product of USA” will be directly affected. These firms will be required to modify their package and container labels if the contents do not conform to these standards. A small number of firms packaging shrimp in Louisiana are anticipated to be affected by this rule, since the majority of shrimp packaged in the state are harvested in Louisiana, Gulf of Mexico or USA waters. Costs associated with modifying labels on packaging and containers are anticipated to be negligible, since printing costs are part of a packaging firm’s annual operating expenses.

Consumers will benefit from knowing that purchases of shrimp packaged in Louisiana with labels bearing the word “Louisiana” or “Louisiana Shrimp”, “Gulf of Mexico” or “Gulf USA Shrimp” and “United States” or “USA” or “Product of USA” meet certain standards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have little or no impact on competition and employment in the public or private sectors.

Wynnette Kees  
Deputy Undersecretary  
1001#050

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Recreational Harvest of Silver and Bighead Carp  
(LAC 76:VII.199)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a rule to allow recreational fishers to harvest specified exotic fish with specific gears.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 1. Freshwater Sports and Commercial Fishing**

**§199. Designation and Taking of Exotic Fish**

A. For the purposes of this Section, the following species of nonindigenous fish are designated as exotic fish:

1. grass carp (*Ctenopharyngodon idella*);
2. silver carp (*Hypophthalmichthys molitrix*);
3. bighead carp (*Hypophthalmichthys nobilis*);
4. black carp (*Mylopharyngodon piceus*).

B. In order to promote the removal of the exotic species identified in this rule, it shall be lawful to retain as bycatch all such designated exotic species of fish which may be caught in all legal commercial fishing gear, which gear is being legally fished. While alive, such exotic fish shall not be maintained, sold, bartered, traded, or exchanged.

C. Recreational fishers, both residents and non-residents, possessing a current license allowing for the take of freshwater species of fish, and anglers exempted from the purchase of a basic fishing license, may take silver and bighead carp (*Hypophthalmichthys molitrix* and *H. nobilis*) by means of boats, dip nets, spears and by snagging.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:319.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 31:728 (March 2005), LR 36:

**Family Impact Statement**

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection

with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

**Public Comments**

Interested persons may submit written comments of the Notice of Intent to Gary Tilyou, Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Thursday, March 4, 2010.

Stephen J. Oats  
Vice-Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Recreational Harvest of Silver and Bighead Carp**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Implementation of the proposed rule will be carried out using existing staff and funding levels. No increase or decrease in costs is anticipated to implement the proposed rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule is anticipated to have no effect on revenue collection of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule would directly benefit recreational fishers by being able to take silver and bighead carp by means of boats, dip nets, spears and by snagging. Silver and bighead carp are filter feeders and are not susceptible to traditional angling fishing methods. Thus, the proposed rule will provide additional fishing opportunities and help control the population levels of these exotic invasive fish species.

Businesses that supply and manufacture boats, dip nets, spears and snagging gear may also directly benefit from increased sales. However, the magnitude of these benefits is expected to be small, since silver and bighead carp are seldom reported as a targeted recreational fish species.

No additional costs, permits, fees, workload or paperwork are anticipated from the proposed rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule is anticipated to have no effect on competition and employment in the public and private sectors.

Wynnette Kees  
Deputy Undersecretary  
1001#051

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

# Administrative Code Update

CUMULATIVE: JANUARY-DECEMBER 2009

LAC Title	Part.Section	Effect	Location LR 35 Month Page	LAC Title	Part.Section	Effect	Location LR 35 Month Page
4	VII.1301-1305	Amended	Apr. 662	28	LXXIX.1101	Amended	Nov. 2348
	VII.Chapter 24	Adopted	May 951		LXXIX.2120	Adopted	Nov. 2348
7	I.101	Amended	Apr. 632	LXXXIII.301,611,1101,2401	Amended	Apr. 638	
	V.2501,2503,2505	Adopted	Mar. 406	LXXXIII.603, 611, 1601, 1603,	Amended	Nov. 2312	
	XIII.103,121,125,129	Amended	Apr. 626	LXXXIII.613	Amended	Aug. 1471	
	XIII.143,173,181,205	Amended	Apr. 626	LXXXIII.1403,3905	Amended	Apr. 641	
	XXI.101,121	Amended	Aug. 1465	LXXXIII.1501-1505,1701-1707	Repealed	Apr. 638	
	XXI.339	Adopted	Aug. 1465	LXXXIII.Chapter 20	Adopted	Dec. 2745	
	XXI.507	Amended	Mar. 406	LXXXIII.3101-3111	Amended	Nov. 2312	
	XXIII.181	Repromulgated	May 870	LXXXIII.Chapter 35	Amended	Aug 1471	
	XXV.101,103,109,113,141	Amended	Feb. 205	LXXXIII.3905,4311	Amended	Apr. 638	
	XXV.101,117,119,141,145	Amended	Aug. 1467	LXXXIII.4909	Repealed	Nov. 2312	
	XXV.141	Repromulgated	Sept. 1872	CI.Chapters 1-15	Adopted	May 894	
	XXVII.123,141,143	Amended	Nov. 2311	CXI.305,307,309,311,312,313	Amended	Feb. 216	
	XXVII.139	Repealed	Apr. 629	CXI.309	Amended	Mar. 443	
	XXVII.191-217	Adopted	Apr. 629	CXI.315,501,701,2011,2701	Amended	Feb. 216	
	XXIX.105,107,109,113	Amended	July 1227	CXI.501,511,1801,2007,2011	Repromulgated	Jan. 57	
	XXIX.107,111	Amended	July 1228	CXI.Chapter 18	Adopted	Feb. 214	
	XXIX.115,117	Amended	July 1127	CXI.1901,1903,1907,1909	Amended	Feb. 208	
XLV.Chapter 1	Adopted	Feb. 204	CXI.1905	Repromulgated	Feb. 208		
10	XV.1101	Amended	July 1236	CXI.1911,1913,1915,1917	Amended	Feb. 208	
	XV.1103	Repealed	July 1236	CXI.1919,1921,1923,1925	Adopted	Feb. 208	
13	III.101-115,131-145	Amended	May 870	CXI.2015,2305,2311,3505	Repromulgated	Jan. 57	
	III.117,147	Repealed	May 870	CXV.303	Amended	Aug. 1474	
	III.301-319	Amended	May 883	CXV.303	Amended	Sept. 1876	
	III.321	Repealed	May 883	CXV.337	Amended	June 1100	
	III.Chapter 17	Amended	Apr. 635	CXV.501	Amended	Aug. 1473	
	III.Chapter 19	Adopted	Jan. 54	CXV.501,502	Repromulgated	Mar. 443	
	V.Chapter 2	Amended	May 887	CXV.502	Amended	June 1099	
22	I.101	Amended	Jan. 85	CXV.513,1103,1117,1121,1129	Amended	Aug. 1475	
	I.201	Amended	Oct. 2194	CXV.519	Amended	June 1100	
	I.207	Amended	May 958	CXV.723	Amended	June 1098	
	I.303	Amended	Mar. 487	CXV.1103	Amended	Apr. 641	
	I.308	Adopted	Oct. 2188	CXV.1103	Amended	June 1097	
	I.312	Adopted	Oct. 2190	CXV.1110	Adopted	June 1098	
	I.315	Amended	Jan. 87	CXV.1118	Adopted	Apr. 641	
	I.316	Amended	July 1248	CXV.1121	Amended	Nov. 2322	
	I.403	Amended	Feb. 252	CXV.1309	Amended	June 1098	
	III.4105	Amended	July 1235	CXV.2304	Adopted	Aug. 1476	
	III.4701	Amended	Dec. 2755	CXV.2319	Amended	July 1230	
	III.4703,4707,4721	Amended	July 1234	CXV.2319	Amended	Sept. 1876	
	III.4723	Amended	Feb. 238	CXV.2319	Amended	Dec. 2750	
	XIII.301,503	Amended	Jan. 65	CXV.2319, 2353	Amended	Nov. 2320	
	XV.Chapter 7	Adopted	Apr. 663	CXV.2321	Amended	Mar. 443	
	28	I.501	Amended	Feb. 223	CXV.2321	Amended	Nov. 2319
		I.501,503,703	Amended	Sept. 1874	CXV.2321	Amended	Sept. 1875
		I.725	Adopted	Aug. 1470	CXV.2321	Amended	Nov. 2319
		IV.103,301,504,701,703,803	Amended	Feb. 227	CXV.2373,2381	Amended	Sept. 1875
IV.301,805,1901,1903		Amended	Aug. 1489	CXV.2373,2385,2387	Amended	Dec. 2747	
IV.301,1303,1903		Amended	Aug. 1490	CXV.2377	Amended	Nov. 2319	
IV.1001		Amended	Feb. 227	CXV.2377	Amended	Dec. 2748	
IV.1201,1203,1205,1207,1211		Amended	Nov. 2348	CXV.2377,2385	Amended	July 1229	
IV.1203		Amended	Apr. 647	CXV.2381	Amended	Nov. 2320	
IV.1213		Amended	Nov. 2348	CXV.2381	Amended	Dec. 2749	
IV.1217		Adopted	Nov. 2348	CXV.2382	Adopted	Sept. 1875	
IV.1401-1409,1413-1417		Amended	Feb. 227	CXV.2385	Amended	Nov. 2323	
IV.Chapter 16		Adopted	Feb. 224	CXV.2387	Amended	Nov. 2324	
IV.1705,1901		Amended	Feb. 227	CXV.2387	Amended	Dec. 2751	
IV.1903		Amended	July 1233	CXV.2701,2703,2705,2707,2709	Amended	Nov. 2317	
IV.2103		Amended	July 1233	CXV.2711	Amended	Nov. 2317	
VI.107,315		Amended	Aug. 1491	CXV.2903, 2905	Amended	Nov. 2318	
VI.305		Amended	July 1234	CXV.3103	Amended	Sept. 1877	
VI.305,309,311		Amended	Feb. 235	CXV.3103	Amended	Nov. 2323	
XXV.1101		Amended	Apr. 646	CXVII.101,301-309,501,701-707	Amended	Nov. 2315	
XXVII.2511		Amended	Apr. 645	CXVII.Chapters 1-9	Adopted	Nov. 2331	
XXXI.503,507		Amended	Aug. 1488	CXXI.1103	Amended	Apr. 643	
XXXIII.301,311		Amended	Apr. 646	CXXXI.233,235	Amended	Aug. 1477	
XXXIII.513		Amended	Sept. 1878	CXXXI.237	Amended	Aug. 1482	
XLIII.464		Amended	July 1232	CXXXI.239	Amended	Feb. 222	
XLV.Chapters 1-5		Amended	Nov. 2326	CXXXI.241	Amended	Apr. 644	
LIII.Chapters 5,7,9,11,15		Amended	Dec. 2724	CXXXI.305,309	Amended	Feb. 222	
LXXV.Chapter 1		Amended	May 891	CXXXI.309	Amended	May 893	
				CXXXI.311	Amended	Apr. 642	
				CXXXI.313	Amended	Feb. 221	
				CXXXI.325	Amended	Aug. 1487	
				CXXXI.348	Adopted	Feb. 220	
			CXXXI.410	Amended	May 894		
			CXXXI.501,503,505,507,509,511	Amended	Dec. 2751		
			CXXXI.504	Adopted	Dec. 2751		

LAC Title	Part.Section	Effect	Location LR 35		LAC Title	Part.Section	Effect	Location LR 35	
			Month	Page				Month	Page
28	CXXXI.629	Amended	Feb.	221	42	III.304	Amended	Oct.	2199
	CXXXI.629,630	Amended	Aug.	1484		VII.2159,3311	Amended	Jan.	84
	CXXXI.710	Adopted	Apr.	645		VII.2711	Repromulgated	Jan.	82
	CXXXI.711	Amended	July	1231		VII.2723	Amended	Oct.	2198
	CXXXI.721,723	Amended	Nov.	2325		VII.2723,2730	Amended	Dec.	2815
	CXXXI.741	Amended	July	1231		VII.2729	Amended	Oct.	2200
CXXXV.115	Amended	June	1097	VII.2927	Amended	Oct.	2199		
31	I.Chapter 1	Adopted	July	1257	IX.1907,2707,2715,2723,2730	Amended	Dec.	2815	
					IX.2159,3311	Amended	Jan.	84	
32	III.601	Amended	Jan.	66	IX.2723	Amended	Oct.	2198	
	V.601	Amended	Jan.	66	IX.2729	Amended	Oct.	2200	
33	I.807	Amended	Jan.	62	IX.2735,2901,3302,4315	Amended	Dec.	2815	
	I.1203,1411,1911,2305,2307	Amended	Oct.	2178	IX.2919	Amended	Oct.	2199	
	I.2701,2703,2705,2707,2709,2711	Adopted	Mar.	449	XI.2405	Amended	Jan.	82	
	I.2713,2715,2717,2719,2721	Adopted	Mar.	449	XI.2405	Repromulgated	Mar.	490	
	I.3931	Amended	June	1106	XI.2731	Repromulgated	Jan.	83	
	III.111,2123,2143	Amended	June	1101	XIII.2159,3311	Amended	Jan.	84	
	III.215	Amended	Oct.	2178	XIII.2715,2723,2730,4204,4209	Amended	Dec.	2815	
	III.301,303,305,307,309,311,313	Adopted	Mar.	456	XIII.2723	Amended	Oct.	2198	
	III.501	Amended	Mar.	456	XIII.2729	Amended	Oct.	2200	
	III.501	Amended	Nov.	2351	XIII.2927	Amended	Oct.	2199	
	III.506,507,2160,3003	Amended	June	1106	43	I.700,723	Amended	Oct.	2183
	III.535,537	Adopted	Apr.	658		I.723	Amended	Oct.	2187
	III.1327,1333	Amended	July	1234		I.Chapter 41	Adopted	Jan.	73
	III.1432,1434	Amended	Mar.	461		VI.101,103,301,303,305	Amended	Feb.	249
	III.1435,1437	Adopted	Mar.	461		VI.105	Adopted	Feb.	249
	III.2117	Amended	May	924		VI.307,309,501,505,507	Amended	Feb.	249
	III.5116,5122,5311,5901	Amended	June	1106		VI.701,703,705	Amended	Feb.	249
	V.105,321,1513,1529,3005,3105	Amended	Sept.	1878		XIII.307,325,327,501,503,507	Amended	Dec.	2800
	V.3099	Amended	June	1106		XIII.912,1728,2128,2720	Adopted	Dec.	2800
	V.3105	Amended	Nov.	2350		XIII.921,923,1103,1143,1727	Amended	Dec.	2800
	V.5111,5119,5127	Amended	Oct.	2178		XIII.2711,2716,2719,2927,3105	Amended	Dec.	2800
	V.30103,30107,30127,30135	Amended	Dec.	2790		XIII.3303,3327,3333,3349,3351	Amended	Dec.	2800
	V.30117,30118,30123	Adopted	Dec.	2790		XIII.5103,6107,6319	Amended	Dec.	2800
	V.30137,30139,30140,30141	Amended	Dec.	2790		XIX.311,313	Amended	Nov.	2464
	V.30144,30173,30228,30246	Amended	Dec.	2790		XIX.701,703,707	Amended	Nov.	2463
	V.30264,30434,30440,30442	Amended	Dec.	2790	46	I.701	Amended	Jan.	64
	V.30452,30505,30573,30588	Amended	Dec.	2790		I.1107	Adopted	Jan.	64
	VI.709,917	Amended	Oct.	2178		I.2117	Amended	May	949
	VII.508,709,717,719	Amended	May	925		V.113,115,1801,1802,1803,1804	Repromulgated	Aug.	1525
	VII.715,1101	Amended	Sept.	1878		V.1805,1806,1901,1903,1905	Repromulgated	Aug.	1525
	VII.1505	Amended	Oct.	2178		XI.102,108	Amended	Jan.	53
	IX.1105,1113,1123	Amended	Mar.	445		XI.737	Adopted	Jan.	53
	IX.1123	Amended	Apr.	654		XIX.1503	Amended	Feb.	236
	IX.1309,1311,1313,1315,1317	Amended	Aug.	1493		XXI.301,311	Amended	Jan.	64
	IX.1309,1507	Amended	Oct.	2178		XXI.603,607	Amended	Sept.	1881
	IX.1319	Amended	Aug.	1493		XXVII.301,306,318	Repealed	May	953
	IX.2301,4901,4903	Amended	June	1106		XXVII.307,308,310,501	Amended	May	953
	IX.2501,2505,2515,2703	Amended	Apr.	648		XXVII.320	Adopted	May	953
	IX.2903,2905,4903	Amended	Apr.	648		XXXIII.306,415,419,420,706	Repromulgated	Jan.	67
	IX.5903	Amended	Sept.	1878		XXXIII.1611,1613,1615	Amended	July	1237
	IX.7301,7303,7305,7307,7309	Amended	May	926	XL.119,120	Amended	Aug.	1519	
	IX.7313,7395	Amended	May	926	XLI.725	Amended	Dec.	2756	
	XI.101,303	Amended	Aug.	1492	XLV.315	Amended	June	1110	
	XI.307	Amended	Oct.	2178	XLV.408	Adopted	Aug.	1531	
	XI.1121	Amended	Sept.	1878	XLV.411	Amended	Mar.	464	
	XV.1599	Amended	June	1106	XLV.1303,1305	Amended	Feb.	240	
	XV.2509	Amended	Oct.	2178	XLV.1304,1307,1319,1321	Adopted	Feb.	240	
	34	III.Chapter 3	Adopted	Aug.	1521	XLV.1323,1325,1327,1357	Adopted	Feb.	240
						XLV.1365,1367,1369	Adopted	Feb.	240
	35	I.1507,1509	Amended	May	950	XLV.3107,3113,3129,3133	Amended	Sept.	1886
		I.1721	Amended	Mar.	463	XLV.3109,3135,3137,3139	Repealed	Sept.	1886
		V.6359	Amended	Mar.	463	XLV.3141,3143,3145,3151	Repealed	Sept.	1886
		XI.9913	Amended	Dec.	2755	XLV.3147,3153,3162	Amended	Sept.	1886
		XIII.503,505,506,510,515	Amended	June	1114	XLV.3529	Amended	Oct.	2182
		XIII.507	Repealed	June	1114	XLV.Chapter 72	Adopted	Aug.	1528
		XIII.516,521,591	Adopted	June	1114	XLV.Chapter 75	Adopted	Aug.	1531
		XIII.520	Repromulgated	June	1114	XLVII.305,1705	Amended	July	1246
		XIII.525,535,560,565,599	Amended	June	1114	XLVII.306	Amended	Dec.	2757
		XIII.11801	Adopted	Dec.	2756	XLVII.3330	Amended	Sept.	1888
						XLVII.3333	Amended	Aug.	1536
37		XIII.503	Repromulgated	July	1247	XLVII.3405	Amended	Aug.	1535
	XIII.Chapter 39	Adopted	Nov.	2451	XLVII.3419	Amended	Aug.	1535	
	XIII.Chapter 77	Amended	Dec.	2781	LI.109,301,501	Amended	June	1111	
	XIII.9519	Amended	Dec.	2783	LIX.201	Amended	Dec.	2815	
	XIII.12307,12315,12323,12327	Amended	Dec.	2783	LIX.301	Amended	Dec.	2815	
	XIII.12325	Repromulgated	Dec.	2783	LIX.903	Amended	Dec.	2814	
	XIII.12329,12331,12333,12339	Amended	Dec.	2783	LX.3303,3311,3313,3315	Amended	June	1113	
	XIII.Chapter 133	Adopted	May	957	LX.3307,3309	Repealed	June	1113	
	XIII.Chapter 135	Adopted	Apr.	675	LXI.105,707,1301,1315,2701	Amended	Sept.	1908	
	XIII.Chapter 137	Adopted	Nov.	2451	LXI.2305,2505,3117	Amended	Dec.	2855	
					LXX.3103,3105,3107,3201,3203	Amended	Sept.	1882	
	41	II.Chapters 1-7,Chapter 9	Adopted	Nov.	2351	LXX.3205,3207,3209,3211,3301	Amended	Sept.	1882
					LXX.3401,3403,3501,3601,3603	Amended	Sept.	1882	

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			Month	Page				Month	Page	
46	LXX.3605,3607	Amended	Sept.	1882	52	I.1318-1321	Adopted	Mar.	407	
	LXXXV.700,711	Amended	Feb.	244		55	I.301	Amended	June	1136
	XCI.103,301,303,305,315,321	Amended	Aug.	1537			I.401	Adopted	Dec.	2818
	XCI.105	Adopted	Aug.	1537			I.1505,1543	Amended	Mar.	491
	XCI.317,319,501,503,507	Repealed	Aug.	1537			I.1907	Amended	Oct.	2201
XCI.509,711,801	Amended	Aug.	1537	V.Chapter 27	Adopted	Nov.	2467			
48	I.Chapter 52	Adopted	Dec.	2760	V.Chapter 29	Adopted	Nov.	2466		
	I.Chapter 60	Adopted	Mar.	466	V.Chapter 31	Adopted	Apr.	677		
	I.6803,6851,6867	Amended	Aug.	1540	VI.301	Amended	Sept.	1904		
	I.9215	Amended	Nov.	2437	VI.505,701,703,705,707,901,903	Amended	Dec.	2819		
	I.9335	Amended	Feb.	245	VI.703,705	Amended	Mar.	490		
	I.9701,9727	Amended	Aug.	1541	VI.903	Adopted	Nov.	2476		
	I.9729	Amended	Feb.	248	VI.905	Repealed	Dec.	2819		
	I.12501-12505,12513,12527	Amended	Nov.	2437	VII.309	Amended	June	1136		
	I.12523,12541,12543,12545	Adopted	Nov.	2437	VII.317	Amended	Jan.	89		
	I.12533	Amended	Nov.	2437	IX.107	Amended	Oct.	2201		
	I.12547,12549,12551,12553	Adopted	Nov.	2437	IX.107	Amended	Nov.	2465		
	V.Chapter 85	Amended	Dec.	2786	56	III.301,303,315,317,319,321,323	Amended	Dec.	2849	
	50	I.8103	Amended	Sept.		1891	III.305,307,309,311,313	Repealed	Dec.	2849
		III.2303	Amended	Jan.		69	III.325	Amended	Dec.	2849
		III.2307	Adopted	Nov.	2449	58	I.305	Amended	Feb.	271
III.2311		Adopted	June	1111	I.1103,1105,1107,1111,1113		Adopted	Nov.	2477	
III.10305		Amended	Sept.	1898	I.1109,1117		Repealed	Nov.	2477	
III.10705		Adopted	Sept.	1899	I.1115,1119		Adopted	Nov.	2477	
III.20301-20305		Adopted	Jan.	72	I.2713	Amended	Nov.	2476		
V.953,955,959		Amended	Sept.	1895	I.3901	Repealed	Nov.	2477		
V.953,955,959		Amended	Sept.	1896	XIII.101	Adopted	May.	949		
V.953,955,959		Repromulgated	Oct.	2182	61	I.1310	Amended	Dec.	2821	
V.965		Amended	Apr.	674		I.1501	Amended	Feb.	255	
V.1125,1127		Adopted	May	955		I.1501	Amended	Aug.	1543	
V.Chapters 53-61		Adopted	May	955		I.1515	Amended	Oct.	2204	
V.5313,5513,5713,5913,6113		Adopted	Sept.	1900		I.1615,1617,1619,1621,1623,	Adopted	Oct.	2173	
VII.1321		Adopted	Sept.	1899		I.1625,1627	Adopted	Oct.	2173	
VII.32913	Amended	Sept.	1897	I.1661-1671		Adopted	Apr.	632		
IX.8301,8305	Adopted	Jan.	70	I.4405		Repealed	July	1255		
IX.15111	Adopted	Sept.	1902	I.4420		Amended	July	1254		
XI.6901	Amended	Sept.	1890	III.101		Amended	June	1138		
XI.6903	Adopted	Sept.	1890	III.501		Adopted	Feb.	254		
XI.Chapter 75	Adopted	Sept.	1888	III.1513-1523		Adopted	July	1252		
XI.16705	Adopted	May	957	III.2111		Repealed	June	1137		
XIII.103	Adopted	Sept.	1894	III.2501		Adopted	June	1137		
XV.335	Amended	Dec.	2758	V.101,303,703,705,901,907		Amended	Mar.	491		
XV.901	Amended	Sept.	1899	V.1103,1301,1305,1307,1503	Amended	Mar.	491			
XV.4307	Amended	Sept.	1894	V.2101,2501,2503,3101,3501	Amended	Mar.	491			
XV.6903,6905	Amended	Sept.	1889	67	I.Chapter 1	Amended	May	966		
XV.7107	Amended	Jan.	69		III.403,1957,1983,1998,2013	Amended	Apr.	689		
XV.10701	Amended	Jan.	73		III.2303,2547	Amended	Feb.	270		
XV.10701	Amended	Sept.	1903	67	III.5567	Adopted	May	966		
XV.10703	Adopted	Jan.	73		III.5585	Adopted	Dec.	2840		
XV.12901,12909,12915	Amended	Nov.	2450		III.5591	Amended	July	1257		
XV.12917	Amended	Sept.	1901	III.7388,7389,7390,7391	Amended	May	961			
XV.16105,16107	Amended	Sept.	1902	III.7392,7393,7395	Amended	May	961			
XV.Chapters 251-257	Adopted	Feb.	245	III.7399	Adopted	May	961			
XV.25505,25901,25903	Adopted	Dec.	2759	V.2301	Amended	May	961			
XVII.301,303,501	Repromulgated	Jan.	71	V.2301	Amended	July	1256			
XVII.501	Amended	Sept.	1903	V.2303	Repealed	July	1256			
XIX.4329,4335	Amended	Sept.	1897	V.3507	Repealed	July	1256			
XIX.4334,4337	Adopted	Sept.	1897	V.3901,3903	Adopted	Oct.	2205			
XIX.4501	Adopted	Dec.	2758	V.Chapters 61-69	Repromulgated	Aug.	1543			
XXI.1101	Amended	Sept.	1891	70	I.1301-1323	Amended	Dec.	2840		
XXI.1103,1105,1107	Adopted	Sept.	1891		I.1325,1327	Adopted	Dec.	2840		
XXI.8101,8105,8301,8303,8701	Amended	Nov.	2447		III.115	Amended	Feb.	271		
XXI.8107	Adopted	Nov.	2447	76	I.309	Adopted	Dec.	2858		
XXI.9101	Amended	Sept.	1893		I.318	Adopted	Mar.	501		
XXI.14301	Amended	Mar.	482		I.319,321	Amended	Apr.	702		
XXI.14301	Amended	Sept.	1893		I.337	Adopted	Sept.	1912		
XXI.Chapters 301-309	Adopted	Nov.	2442		III.329	Amended	May	968		
XXVII.351,353	Adopted	Jan.	70		III.335	Amended	Apr.	707		
XXIX.113	Amended	Sept.	1901		V.111	Amended	Sept.	1910		
XXXI.101,103,105,107	Adopted	June	1112		V.125	Amended	Apr.	702		
51	II.117	Amended	Feb.		249	V.701	Amended	Apr.	690	
	IX.305,321,331	Amended	July		1239	VII.205	Adopted	Apr.	702	
	XII.101,355,1101,1103,1113	Amended	July		1239	VII.357	Amended	Apr.	704	
	XII.101,913,1139,1507,1509	Amended	Mar.		483	VII.527	Adopted	Mar.	503	
	XII.313	Repealed	Mar.		483	VII.529	Adopted	Mar.	503	
	XII.1115,1117,1119,1123,1125	Amended	July		1239	VII.905	Amended	June	1139	
	XII.1127,1129,1133,1135,1137	Amended	July		1239	VII.905	Repromulgated	July	1263	
	XII.1139,1903,1911	Amended	July	1239	VII.1101	Amended	June	1140		
	XII.1141	Adopted	July	1239	XI.307	Adopted	Apr.	704		
	XII.Chapter 19	Adopted	Mar.	483						
	XXVII.301,501	Amended	July	1238						
	XXVII.503	Adopted	July	1238						

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76	XIX.101,103	Amended	July	1278	76	XIX.113	Amended	Nov.	2478
	XIX.103	Amended	Dec.	2856		XIX.115	Amended	Jan.	90
	XIX.111	Amended	July	1264		XIX.115	Amended	Nov.	2481
	XIX.113	Amended	Jan.	91					

# Policy and Procedure Memoranda

## POLICY AND PROCEDURE MEMORANDA

Office of the Governor  
Division of Administration  
Office of State Travel

General Travel—PPM 49  
(LAC 4:V.Chapter 15)

The following shows the amended text in PPM 49. This supersedes all prior issues of PPM 49 published in the Louisiana Register. This revised PPM 49 also supersedes and replaces PPM 49 which had been designated as LAC 4:V.Chapter 15.

### Title 4

### ADMINISTRATION

### Part V. Policy and Procedure Memoranda

### Chapter 15. General Travel Regulations—PPM Number 49

#### §1501. Authorization and Legal Basis

A. In accordance with the authority vested in the Commissioner of Administration by Section 231 of Title 39 of the Revised Statutes of 1950 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950-968 as amended, notice is hereby given of the revision of Policy and Procedures Memorandum No. 49, the state general travel regulations, effective July 1, 2009. These amendments are both technical and substantive in nature and are intended to clarify certain portions of the previous regulations or provide for more efficient administration of travel policies. These regulations apply to all state departments, boards and commissions created by the legislature or executive order and operating from funds appropriated, dedicated, or self-sustaining; federal funds; or funds generated from any other source.

B. Legal Basis (R.S. 39:231.B)—"The commissioner, with the approval of the governor, shall prescribe rules defining the conditions under which each of various forms of transportation may be used by state officers and employees and used by them in the discharge of the duties of their respective offices and positions in the state service and he shall define the conditions under which allowances will be granted for all other classes of traveling expenses and the maximum amount allowable for expenses of each class."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1252 (June 2000), LR 27:802 (June 2001), LR 28:1125 (June 2002), LR 29:822 (June 2003), LR 30:1111 (June 2004), LR 31:1183 (June 2005), LR 32:938 (June 2006), LR 33:966 (June 2007), repromulgated LR 33:1314 (July 2007), amended LR 34:1299 (July 2008), LR 35:1192 (July 2009), repromulgated LR 36:150 (January 2010).

#### §1502. Definitions

A. For the purposes of this PPM, the following words have the meaning indicated.

##### *Authorized Persons*—

a. advisors, consultants, contractors and other persons who are called upon to contribute time and services to the state who are not otherwise required to be reimbursed through a contract for professional, personal, or consulting services in accordance with R.S. 39:1481 et seq.;

b. members of boards, commissions, and advisory councils required by federal or state legislation or regulation. Travel allowance levels for all such members and any staff shall be those authorized for state employees unless specific allowances are legislatively provided;

c. the department head or his designee is allowed to deem persons as an authorized traveler for official state business only.

NOTE: College/University Students must be deemed authorized travelers to be reimbursed for state business purposes. A centralized file must be kept containing all of these approvals.

*Conference/Convention*—is herein defined as a meeting (other than routine) for a specific purpose and/or objective. Non-routine meetings can be defined as a seminar, conference, convention, or training. Documentation required is a formal agenda, or program, or letter of invitation, or registration fee. Participation as an exhibiting vendor in an exhibit /trade show also qualifies as a conference. For a hotel to qualify for conference rate lodging, requires that the hotel is hosting or is in "conjunction with hosting" the meeting. In the event the designated conference hotel(s) have no room availability, a department head may approve to pay actual hotel cost not to exceed the conference lodging rates for other hotels located near the conference hotel.

*Contract Airfare*—these airfares are only for use by authorized travelers on official state business. Competitive bid airfares that are fully refundable, non-penalty tickets. Contract price is firm for last seat availability.

*Controlled Billed Account (CBA)*—credit account issued in an agency's name (no plastic card issued). These accounts are direct liabilities of the state and are paid by each agency. CBA accounts are controlled through an authorized approver(s) to provide a means to purchase airfare and registration only. Each department head determines the extent of the account's use.

*Corporate Travel Card*—credit cards issued in an employee's name to be used for official business travel expenses. Corporate Travel Cards are individual liability cards, which must be paid in full each month by the cardholder. Charges to these accounts are never the liability of the state.

*Emergency Travel*—under extraordinary circumstances where the best interests of the state require that travel be undertaken not in compliance with these regulations, approval after the fact by the Commissioner of Administration may be given if appropriate documentation is

presented promptly. Each department shall establish internal procedures for authorizing travel in emergency situations.

*Extended Stays*—of any assignment made for a period of 31 or more consecutive days at a place other than the official domicile.

*Higher Education Entities*—entities listed under Schedule 19 Higher Education of the General Appropriations Bill.

*In-State Travel*—all travel within the borders of Louisiana or travel through adjacent states between points within Louisiana when such is the most efficient route.

*International Travel*—all travel to destinations outside the 50 United States, District of Columbia, Puerto Rico and the Virgin Islands, American Samoa, Guam.

*Lowest Logical Airfare*—airfares available to the public. In general, these types of airfares are non-refundable, penalty tickets. Penalties could include restrictions such as advanced purchase requirements, weekend stays, etc. Prices will increase as seats are sold. When schedule changes are required for lowest logical tickets, penalty fees are added.

*Official Domicile*—every state officer, employee, and authorized person, except those on temporary assignment, shall be assigned an official domicile:

a. except where fixed by law, official domicile of an officer or employee assigned to an office shall be, at a minimum, the city limits in which the office is located. The department head or his designee should determine the extent of any surrounding area to be included, such as parish or region. As a guideline, a radius of at least 30 miles is recommended. The official domicile of an authorized person shall be the city in which the person resides, except when the department head has designated another location (such as the person's workplace);

b. a traveler whose residence is other than the official domicile of his/her office shall not receive travel and subsistence while at his/her official domicile nor shall he/she receive reimbursement for travel to and from his/her residence;

c. the official domicile of a person located in the field shall be the city or town nearest to the area where the majority of work is performed, or such city, town, or area as may be designated by the department head, provided that in all cases such designation must be in the best interest of the agency and not for the convenience of the person.

*Out-of-State Travel*—travel to any of the other 49 states plus District of Columbia, Puerto Rico and the Virgin Islands, American Samoa, Guam.

*Passport*—a document identifying an individual as a citizen of a specific country and attesting to his or her identity and ability to travel freely.

*Per Diem*—a flat rate paid in lieu of travel reimbursement for people on extended stays.

*Receipts/Document Requirements*—supporting documentation must be retained according to record retention laws. It shall be at the discretion of each agency to determine where the receipts/documents will be maintained.

*State Employee*—employees below the level of state officer

*State Officer*—

a. state elected officials;

b. department head as defined by Title 36 of the Louisiana Revised Statutes (secretary, deputy secretary,

under secretary, assistant secretary, and the equivalent positions in higher education and the office of elected officials).

*Suburb*—an immediate or adjacent location (overflow of the city) to the higher cost areas which would be within approximately 30 miles of the highest cost area.

*Temporary Assignment*—any assignment made for a period of less than 31 consecutive days at a place other than the official domicile.

*Travel Period*—a period of time between the time of departure and the time of return.

*Travel Routes*—the most direct and usually traveled route must be used by official state travelers.

*Traveler*—a state officer, state employee, or authorized person when performing authorized travel.

*Visa*—a document or, more frequently, a stamp in a passport authorizing the bearer to visit a country for specific purposes and for a specific length of time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1252 (June 2000), LR 27:802 (June 2001), LR 28:1125 (June 2002), LR 29:822 (June 2003), LR 30:1111 (June 2004), LR 31:1183 (June 2005), LR 32:938 (June 2006), LR 33:966 (June 2007), repromulgated LR 33:1314 (July 2007), amended LR 34:1299 (July 2008), LR 35:1192 (July 2009), repromulgated LR 36:150 (January 2010).

### **§1503. General Specifications**

#### **A. Department Policies**

1. Department heads may establish travel regulations within their respective agencies, but such regulations shall not exceed the maximum limitations established by the Commissioner of Administration. Three copies of such regulations shall be submitted for prior review and approval by the Commissioner of Administration. One of the copies shall highlight any exceptions /deviations to PPM-49.

2. Department and agency heads will take whatever action necessary to minimize all travel to carry on the department mission.

3. Contracted Travel Services. The state has contracted for travel agency services which use is mandatory for airfares unless exemptions have been granted by the Division of Administration prior to purchasing airfare tickets. The state also encourages the use of the contracted travel agency to make reservations for hotel and vehicle accommodations, but hotel and vehicles are not a mandatory requirement.

4. When a state agency enters into a contract with an out-of-state public entity, the out-of-state public entity may have the authority to conduct any related travel in accordance with their published travel regulations.

#### **5. Authorization to Travel**

a. All non-routine travel must be authorized and approved in writing by the head of the department, board, or commission from whose funds the traveler is paid. A department head may delegate this authority in writing to one designated person. Additional persons within a department may be designated with approval from the Commissioner of Administration. A file shall be maintained on all approved travel authorizations.

b. Annual travel authorizations are no longer a mandatory requirement of PPM-49 for routine travel; however, an agency can continue to utilize this process if determined to be in your department's best interests. A travel authorization is still required for non-routine meetings, conferences and out-of-state travel.

#### B. Funds for Travel Expenses

1. Persons traveling on official business will provide themselves with sufficient funds for all routine travel expenses that cannot be covered by the corporate travel card. Advances of funds for travel shall be made only for extraordinary travel and should be punctually repaid when submitting the Travel voucher covering the related travel, not later than the fifteenth day of the month following the completion of travel.

2. Exemptions: At the agency's discretion, cash advances may be allowed for:

a. employees whose salary is less than \$30,000/year;

b. employees who accompany and/or are responsible for students on group or client travel;

c. new employees who are infrequent travelers or have not had time to apply for and receive the card;

d. employees traveling for extended periods, defined as 31 or more consecutive days;

e. employees traveling to remote destinations in foreign countries, such as jungles of Peru or Bolivia;

f. advanced ticket / lodging purchase;

g. registration for seminars, conferences, and conventions;

h. incidental costs not covered by the corporate travel card, i.e., taxi fares, tolls, registration fees; conference fees may be submitted on a preliminary request for reimbursement when paid in advance;

i. any ticket booked by a traveler 30 days or more in advance and for which the traveler has been billed, may be reimbursed by the agency to the traveler on a preliminary expense reimbursement request. The traveler should submit the request with a copy of the bill or invoice. Passenger airfare receipts are required for reimbursement;

j. employees who infrequently travel or travelers that incur significant out-of-pocket cash expenditures.

3. Expenses Incurred on State Business. Traveling expenses of travelers shall be limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the agency and must be within the limitations prescribed herein.

4. CBA (Controlled Billed Account) issued in an agency's name is to be used for airfare and registration. Other credit cards issued in the name of the state agency are not to be used for the purpose of securing transportation, lodging, meals, or telephone and telegraph service, unless prior written permission has been obtained from the Commissioner of Administration.

5. No Reimbursement When No Cost Incurred by Traveler. This includes but is not limited to reimbursements for any lodging and/or meals furnished at a state institution or other state agency, or furnished by any other party at no cost to the traveler. In no case will a traveler be allowed mileage or transportation when he/she is gratuitously transported by another person.

#### C. Claims for Reimbursement

1. All claims for reimbursement for travel shall be submitted on state Form BA-12, unless exception has been granted by the Commissioner of Administration, and shall include all details provided for on the form. It must be signed by the person claiming reimbursement and approved by his/her immediate supervisor. The purpose for extra and unusual travel must be stated in the space provided on the front of the form. In all cases the date and hour of departure from and return to domicile must be shown.

2. Except where the cost of air transportation, conference, or seminar is invoiced directly to the agency/department, all expenses incurred on any official trip shall be paid by the traveler and his travel voucher shall show all such expenses in detail to the end that the total cost of the trip shall be reflected by the travel voucher. If the cost of air transportation is paid directly by the agency/department, a notation will be indicated on the travel voucher indicating the date of travel, destination, amount, and the fact that it has been paid by the agency/department. The traveler's copy of the passenger receipt is required.

3. In all cases, and under any travel status, cost of meals and lodging shall be paid by the traveler and claimed on the travel voucher for reimbursement, and not charged to the state department, unless otherwise authorized by the department head or his designee. A centralized file must be kept containing all of these approvals.

4. Claims should be submitted within the month following the travel, but preferably held until a reimbursement of at least \$10 is due. Department heads at their discretion may make the 30 day submittal mandatory on a department wide basis.

5. Any person who submits a claim pursuant to these regulations and who willfully makes and subscribes to any claim which he/she does not believe to be true and correct as to every material matter, or who willfully aids or assists in, or procures, counsels or advises the preparation or presentation of a claim, which is fraudulent or is false as to any material matter shall be guilty of official misconduct. Whoever shall receive an allowance or reimbursement by means of a false claim shall be subject to severe disciplinary action as well as being criminally and civilly liable within the provisions of state law.

6. Agencies are required to reimburse travel in an expeditious manner. In no case shall reimbursements require more than 30 days to process from receipt of complete, proper travel documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1253 (June 2000), LR 27:803 (June 2001), LR 28:1126 (June 2002), LR 29:823 (June 2003), LR 30:1112 (June 2004), LR 31:1184 (June 2005), LR 33:966 (June 2007), repromulgated LR 33:1315 (July 2007), amended LR 34:1300 (July 2008), repromulgated LR 35:1193 (July 2009), LR 36:151 (January 2010).

#### **§1504. Methods of Transportation**

A. Cost-Effective Transportation. The most cost-effective method of transportation that will accomplish the purpose of the travel shall be selected. Among the factors to be considered should be length of travel time, employee's

salary, cost of operation of a vehicle, cost and availability of common carrier services, etc. Common carrier shall be used for out-of-state travel unless it is documented that utilization of another method of travel is more cost-efficient or practical and approved in accordance with these regulations.

#### B. Air

1. Private Owned or Charter Planes. Before travel by privately-owned or by chartered aircraft is authorized for individual's travel by a department head, the traveler shall certify that: 1) at least one hour of working time will be saved by such travel; and 2) no other form of transportation, such as commercial air travel or a state plane, will serve this same purpose.

a. Chartering a privately owned aircraft must be in accordance with the Procurement Code.

b. Reimbursement for use of a chartered or unchartered privately owned aircraft under the above guidelines will be made on the following basis:

i. at the rate of \$1.07 cents per mile; or

ii. at the lesser of state contract rate or coach economy airfare. If there are extenuating circumstances requiring reimbursement for other than listed above, approval must be granted by the Commissioner of Administration.

c. When common carrier services are unavailable and time is at a premium, travel via state aircraft shall be investigated, and such investigation shall be documented and readily available in the department's travel reimbursement files. Optimum utilization will be the responsibility of the department head.

2. Commercial Airlines. (receipts required) All state travelers are to purchase commercial airline tickets through the state contracted travel agency (see front cover for contract travel agency contact numbers). This requirement is mandatory unless approval is granted from the State Travel Office. (In the event a traveler seeks approval to go outside the travel agency, they shall submit their request through their agency travel program administrator, who will determine if the request should be submitted to the Office of State Travel.) While the use of the contract travel agency is mandatory, the state traveler has options for the type of airfare ticket purchased. This office strongly encourages use of lowest logical airfares, not state contract fares. You should ask the contracted travel agency to check for the lowest logical rates based on your personal needs. The state always supports purchasing the "best value" ticket. Therefore once all rates are received, the traveler must compare cost and options to determine which fare would be the "best value" for their trip. To make this determination, the traveler must ask the question: Is there a likelihood my itinerary could change or be cancelled? Depending on the response, you must determine if the costs associated with changing a non-refundable ticket (usually around \$150) would still be the best value. Another factor to assist having a travel agent search the lowest fare is being able to advise the agent if you are flexible in either your dates or time of travel. By informing the travel agent of your "window of time" for your departure and return will assist them to search for the best price.

a. Travelers are to seek airfares allowing an ample amount of lead time prior to departure date. The lead-time should be at least 14 days in advance of travel dates to

ensure the lowest fares are available. Generally, the earlier a ticket is purchased, provides for lower airfares.

b. State contract airfare tickets are not available for personal, companion or spouse travel. This is a requirement of the airlines and our failure to monitor the use of these contract airfares could cause their cancellation. Therefore, persons booking tickets for non-official business using contract rates will be subject to disciplinary action as well as payment of the difference between contract airfare and full coach fares.

c. Commercial air travel will not be reimbursed in excess of lowest logical or state contract air rate when it has been determined to be the best value (receipts required). The difference between contract or coach/economy class rates and first class or business class rates will be paid by the traveler. Upgrades at the expense of the state are not permitted, without the approval of the Commissioner of Administration. If space is not available in less than first or business class air accommodations in time to carry out the purpose of the travel, the traveler will secure a certification from the airline indicating this fact. The certification is required for travel reimbursement.

d. The policy regarding airfare penalties are the state will pay for the airfare and/or penalty incurred for a change in plans or cancellation when the change or cancellation is required by the state or other unavoidable situations approved by the agency's department head. Justification for the change or cancellation by the traveler's department head is required on the travel voucher.

e. When an international flight segment is more than 10 hours in duration, the state will allow the business class rate not to exceed 10 percent of the coach rate. The traveler's itinerary provided by the travel agency must document the flight segment as more than 10 hours and must be attached to the travel voucher.

f. A lost airline ticket is the responsibility of the person to whom the ticket was issued. The airline charge of searching and refunding lost tickets will be charged to the traveler. The difference between the prepaid amount and the amount refunded by the airlines must be paid by the employee.

g. If companion fares are purchased for a state employee and non-state employee, the reimbursement to the state employee will be the amount of the lowest logical fare.

h. Traveler is to use the lowest logical airfare/state contract whether the plane is a prop or a jet.

i. Employees may retain promotional items, including frequent flyer miles, earned on official state travel. However, if an employee makes travel arrangements that favor a preferred airline/supplier to receive promotional items/points and this circumvents purchasing the most economical means of travel, they are in violation of this travel policy. Costs for travel arrangements subject to this violation are non-reimbursable.

j. When making airline reservations for a conference, let the travel agent know that certain airlines have been designated as the official carrier for the conference. In many instances, the conference registration form specifies that certain airlines have been designated as the official carrier offering discount rates, if available. If so, giving this information to our contracted agencies could result in them securing that rate for your travel.

C. Motor Vehicle. No vehicle may be operated in violation of state or local laws. No traveler may operate a vehicle without having in his/her possession a valid U.S. driver's license. Safety restraints shall be used by the driver and passengers of vehicles. All accidents, major and minor, shall be reported first to the local police department or appropriate law enforcement agency. An accident report form, available from the Office of Risk Management (ORM) of the Division of Administration, should be completed as soon as possible and returned to ORM, together with names and addresses of principals and witnesses. Any questions about this should be addressed to the Office of Risk Management of the Division of Administration. These reports shall be in addition to reporting the accident to the Department of Public Safety as required by law. Any persons who are not official state employees must sign an Indemnification Form, located at Office of State Travel's website, <http://www.doa.louisiana.gov/osp/travel/forms.htm> prior to riding in or driving a state-owned vehicle or rental vehicle on behalf of the State. Each agency is responsible in ensuring that this along with any other necessary documents are completed and made part of the travel file prior to travel dates.

#### 1. State-Owned Vehicles

a. No person may be authorized to operate or travel in a fleet vehicle unless that person is a classified or unclassified employee of the state of Louisiana; any duly appointed member of a state board, commission, or advisory council; and any other person who has received specific approval from the department head or his designee to operate or travel in a fleet vehicle on official state business. A centralized file must be kept containing all of these approvals. Students shall not be authorized to drive state-owned or rented vehicles for use on official state business if not employed by the State.

b. Travelers in state-owned automobiles who purchase needed fuel, repairs and equipment while on travel status shall make use of all fleet discount allowances and state bulk purchasing contracts where applicable. Each agency/department shall familiarize itself with the existence of such allowances and/or contracts and location of vendors by contacting the Purchasing Office, Division of Administration. State-owned credit cards will not be issued to travelers for use in the operation of privately owned vehicles.

c. State-owned vehicles may be used for out-of-state travel only if permission of the department head has been given prior to departure. If a state-owned vehicle is to be used to travel to a destination more than 500 miles from its usual location, documentation that this is the most cost-effective means of travel should be readily available in the department's travel reimbursement files.

d. Unauthorized persons should not be transported in state vehicles. Approval of exceptions to this policy may be made by the traveler's supervisor if he determines that it is official state business and the best interest of the state will be served and if the passenger (or passenger's guardian) signs an indemnification form acknowledging the fact that the state assumes no liability for any loss, injury, or death resulting from said travel.

#### 2. Personally Owned Vehicles

a. When two or more persons travel in the same personally owned vehicle, only one charge will be allowed for the expense of the vehicle. The person claiming reimbursement shall report the names of the other passengers.

b. A mileage allowance shall be authorized for travelers approved to use personally-owned vehicles while conducting official state business. Mileage shall be reimbursable on the basis of no more than 48 cents per mile per the following:

i. for official state business travel:

(a). employee may utilize a state vehicle when available;

(b). employee may rent a vehicle from the Enterprise Rent-A-Car's State Motor Pool Rental Contract; or;

(c). if an employee elects to use their personal vehicle, reimbursement may not exceed a maximum of 99 miles per round trip and/or day at 48 cents per mile.

c. Mileage shall be computed by one of the following options:

i. on the basis of odometer readings from point of origin to point of return;

ii. by using a website mileage calculator or a published software package for calculating mileage such as Tripmaker, How Far Is It, Mapquest, etc.. Employee is to print the page indicating mileage and attach it with their travel expense form.

d. An employee shall never receive any benefit from not living in his/her official domicile. In computing reimbursable mileage to an authorized travel destination from an employee's residence outside the official domicile, the employee is always to claim the lesser of the miles from their official domicile or from their residence. If an employee is leaving on a non-work day or leaving significantly before or after work hours, the department head may determine to pay the actual mileage from the employee's residence, not to exceed a maximum of 99 miles per round trip and/or day at 48 cents per mile. See Section C.2.b.

e. The department head or his designee may approve an authorization for routine travel for an employee who must travel in the course of performing his/her duties; this may include domicile travel if such is a regular and necessary part of the employee's duties, but not for attendance at infrequent or irregular meetings, etc., within the city limits where his/her office is located, the employee may be reimbursed for mileage only not to exceed a maximum of 99 miles per round trip and/or day at 48 cents per mile. See Section C.2.b.

f. Reimbursements will be allowed on the basis of 48 cents per mile, not to exceed a maximum of 99 miles, per round trip and/or day, to travel between a common carrier/terminal and the employees point of departure, i.e. home, office, etc., whichever is appropriate and in the best interest of the state. See Section C.2.b.

g. When the use of a privately-owned vehicle has been approved by the department head for out-of-state travel for the traveler's convenience, the traveler will be

reimbursed for in-route expenses on the basis of \$0.48 per mile only. The total cost of the mileage may not exceed the cost of travel by using the lesser of 1) State Contract airfare or 2) lowest logical airfare obtained at least 14 days prior to the trip departure date. The traveler is personally responsible for any other expenses in-route to and from destination which is inclusive of meals and lodging. If a traveler, at the request of the department, is asked to take their personally owned vehicle out-of-state for a purpose that will benefit the agency, then the department head may on a case-by-case basis determine to pay a traveler for all/part of in-route travel expenses. File should be justified accordingly.

h. When a traveler is required to regularly use his/her personally owned vehicle for agency activities, the agency head may request authorization from the Commissioner of Administration for a lump sum allowance for transportation or reimbursement for transportation (mileage). Request for lump sum allowance must be accompanied by a detailed account of routine travel listing exact mileage for each such route and justification why a rental vehicle is not feasible. Miscellaneous travel must be justified by at least a three-month travel history to include a complete mileage log for all travel incurred, showing all points traveled to or from and the exact mileage. Requests for lump sum allowance shall be granted for periods not to exceed one fiscal year.

i. The traveler shall be required to pay all operating expenses of their personal vehicle including fuel, repairs, and insurance.

### 3. Rented Motor Vehicles (Receipts Required)

#### a. In-State Vehicle Rental.

i. The State has contracted for rentals based out of Louisiana through Enterprise Rent-A-Car's State Motor Pool Rental Contract for business travel which applies to all State of Louisiana employees and/or authorized travelers traveling on official state business.

ii. A Department Head/Higher Education Entity Head, or his designee, may give an approval to bypass the contract, on a case-by-case basis and/or program, group or internal division provided they document the reasons and maintain this justification in the file. A request for total agency/college/university exemption may be granted by the Commissioner of Administration. Requests for exemption must be accompanied by a detailed explanation as to why the contract is not feasible.

iii. Members of boards and commissions are not required to utilize the State Motor Pool Rental Contract. They are, however, strongly urged to do so when a cost benefit analysis indicates potential savings to the state.

iv. State contractors required to follow PPM-49 by the terms of their contracts may, but are not required to, use the State Motor Pool Rental Contract.

v. Although exemptions may be granted to the State Motor Pool Rental Contract, all must adhere to the new mileage reimbursement rate of no more than 48 cents per mile for personally owned vehicles, which was effective December 21, 2009.

vi. Rentals or state owned vehicles, where available, should be used by any employee and/or authorized traveler who is eligible to receive the mileage allowance that plans to travel 100 miles or more in a trip. For trips of less than 100 miles employees may utilize their own vehicles and

receive mileage reimbursement not to exceed a maximum of 99 miles per round trip and/or day at 48 cents per mile, utilize a state vehicle when available, or rent a vehicle from Enterprise Rent-A-Car's State Motor Pool Rental Contract.

vii. Students shall not be authorized to drive state-owned or rented vehicles for use on official state business if not employed by the State.

viii. Reservations should not be made at an airport location, as this will add additional unnecessary cost to your rentals.

ix. An employee can reserve a vehicle in one of several ways using the State's Corporate ID Number **NA1403 and Company Name or PIN Number—STA.**

(a). Reserve by calling an Enterprise local rental branch directly (during business hours)

(b). By calling 1-800-Rent-A-Car (24 hours/day)

(c). Accessing the State Travel Website at [http://www.enterprise.com/car\\_rental/home.do](http://www.enterprise.com/car_rental/home.do)

(d). Note: Reservations are to be made 24 hours in advance for guaranteed vehicle class/size

b. Payments for rentals made only through the State Motor Pool Rental Contract may be made using the "LaCarte" purchasing card, an employee's corporate travel card or by direct bill to the agency. This will be an agency decision as to the form of payment chosen. If direct bill is chosen, agency must set up account billing information with Enterprise. An account may be established by contacting Joseph Rosenfeld at 225-445-7250, [joseph.g.rosenfeld@erac.com](mailto:joseph.g.rosenfeld@erac.com).

c. Out-of-State Vehicle Rental. For vehicle rentals outside of Louisiana, the state does not provide contracts. However, the state has received price offers that will be available from multiple vehicle rental companies listed in the Louisiana Travel Guide. When a traveler is approved to rent a vehicle for out-of-state use, they may select a vendor listed in the guide or seek a lower rate.

d. Approvals. Written approval of the Department Head or his designee prior to departure is required for the rental of vehicles, however, if your agency chooses, approval may be handled on an annual basis if duties require frequent rentals. Special approval is required for rental of any vehicle above the "full size" category.

e. Vehicle Rental Size. Only the cost of a compact model is reimbursable, unless 1) non-availability is documented, 2) the vehicle will be used to transport more than two persons or 3) the cost of a larger vehicle is no more than the rental rate for a compact. When a larger vehicle is an option as stated in 1) or 2) above, the upgraded vehicle shall be the next smallest size and lowest price necessary to accommodate the number of persons traveling. Any rental vehicle not covered in the State Motor Pool Rental Contract should be bid in accordance with proper purchasing rules and regulations.

f. Personal Rental Days. Personal use of a rental vehicle during a rental for official state business is not allowed.

g. Gasoline (Receipts Required). An employee should purchase gasoline with the state's fuel card or other credit card at reasonable cost from a local gasoline station prior to returning the rental. Pre-paid fuel options are only to be allowed when the traveler can document that the pre-purchased amount was necessary and that the amount

charged by the rental company is reasonable in relation to local gasoline cost.

h. Insurance for Vehicle Rentals within the 50 United States. Insurance billed by car rental companies is not reimbursable. All insurance coverage for rental vehicles, other than Enterprise's Rent-A-Car's State Motor Pool Rental Contract, is provided by the Office of Risk Management. Should a collision occur while on official state business, the accident should immediately be reported to the Office of Risk Management, and rental company. CDW/Damage Waiver Insurance and \$1 Million Liability Protection Coverage is included in the State Motor Pool Rental Contract price through Enterprise Rent-A-Car. **NO OTHER INSURANCE WILL BE REIMBURSED WHEN RENTING, EXCEPT WHEN RENTING OUTSIDE THE 50 UNITED STATES, SEE SECTION 1504.C.3.i.** There should be no other charges added to the base price, unless you reserve your vehicle at an airport location (which is NOT recommended). Reimbursable amounts would then be submitted at the end of the trip on a travel expense form.

i. Insurance for Vehicles Rentals outside the 50 United States. (receipts required) The Office of Risk Management (ORM) recommends that the appropriate insurance (liability and physical damage) provided through the car rental company be purchased when the traveler is renting a vehicle outside the 50 United States. With the approval of the department head required insurance costs may be reimbursed for travel outside the 50 United States only.

(a). The following are insurance packages available by rental vehicle companies which are reimbursable:

(i). Collision Damage Waiver (CDW)—should a collision occur while on official state business, the cost of the deductible should be paid by the traveler and a reimbursement claimed on a travel expense voucher. The accident should also be reported to the Office of Risk Management;

(ii). Loss Damage Waiver (LDW);

(iii). Auto tow Protection (ATP)—\*approval of Department Head;

(iv). Supplementary Liability Insurance (SLI)—\*if required by the rental company;

(v). Theft and/or Super Theft Protection (coverage of contents lost during a theft or fire)—\*if required by the car rental company;

(vi). vehicle coverage for attempted theft or partial damage due to fire, \*if required by the car rental company

(b). The following are some of the insurance packages available by rental vehicle companies that are not reimbursable:

(i). Personal Accident Insurance (PAC);

(ii). Emergency Sickness Protection (ESP);

j. Navigation Equipment (GPS System), rented not purchased, may only be reimbursed if an employee justifies the need for such equipment and with prior approval of the Department Head or his designee.

D. Public Ground Transportation. The cost of public ground transportation such as buses, subways, airport shuttle/limousines, and taxis are reimbursable when the expenses are incurred as part of approved state travel. Taxi

reimbursement is limited to \$15 per day without receipts; claims in excess of \$15 per day require receipts to account for total daily amount claimed. At the agency's discretion, the department head may implement an agency wide policy requiring receipts for an amount less than \$15 per day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1254 (June 2000), LR 27:804 (June 2001), LR 28:1127 (June 2002), LR 29:824 (June 2003), LR 30:1113 (June 2004), LR 31:1185 (June 2005), LR 32:938 (June 2006), LR 33:966 (June 2007), repromulgated LR 33:1316 (July 2007), amended LR 34:1301 (July 2008), LR 35:1195 (July 2009), LR 36:152 (January 2010).

#### **§1505. State Issued Travel Credit Cards/CBA Accounts**

A. Use. The State Travel Office contracts for an official state corporate travel card to form one source of payment for travel. If a supervisor recommends an employee be issued a state travel card, the employee should complete an application through their agency travel program administrator.

1. An employee's corporate travel card or agency CBA (Controlled Billed Accounts) must be used to purchase contract airfare. This is a mandatory requirement by the airlines in order to continue to receive discounted, non-penalty state contract airline tickets.

2. An employee's corporate travel card may also be used to purchase lowest logical airfare tickets and other travel related expenses such as food and lodging, but it is not mandatory.

3. The employee's corporate travel card is for official state travel business purposes only. Personal use on the state travel card may result in disciplinary action.

#### **B. Liability**

1. The corporate travel card is the liability of the employee and not the state. Each monthly statement balance is due in full to the card-issuing bank. Travel card accounts that become delinquent are subject to being suspended or revoked. Those accounts will not be reinstated until such time the bank determines that employee to be credit-worthy. The state will have no tolerance to assist those employees that abuse their travel card privileges. Employees with delinquent payment may have their travel privileges revoked and/or subject to other disciplinary action.

2. The department/agency is responsible for cancellation of corporate travel cards for those employees terminating/retiring state service.

3. The department/agency's travel program administrator is responsible for completing a maintenance form to transfer an employee from one state agency to another. The employee may keep the same account number, but the agency change must be reported to the bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1254 (June 2000), LR

27:804 (June 2001), LR 28:1127 (June 2002), LR 29:824 (June 2003), LR 30:1113 (June 2004), LR 31:1188 (June 2005), repromulgated LR 33:1319 (July 2007), amended LR 34:1304 (July 2008), repromulgated LR 35:1198 (July 2009), LR 36:156 (January 2010).

## **§1506. Lodging and Meals**

### **A. Eligibility**

1. **Official Domicile/Temporary Assignment.** Travelers are eligible to receive reimbursement for travel only when away from "official domicile" or on temporary assignment unless exception is granted in accordance with these regulations. Temporary assignment will be deemed to have ceased after a period of 31 calendar days, and after such period the place of assignment shall be deemed to be his/her official domicile. He/she shall not be allowed travel and subsistence unless permission to extend the 31 day period has been previously secured from the Commissioner of Administration.

2. **Extended Stays.** For travel assignments approved by the Commission of Administration involving duty for extended periods (31 or more consecutive days) at a fixed location, the reimbursement rates indicated should be adjusted downward whenever possible. Claims for meals and lodging may be reported on a per diem basis supported by lodging receipt. Care should be exercised to prevent allowing rates in excess of those required to meet the necessary authorized subsistence expenses. It is the responsibility of each agency head to authorize only such travel allowances as are justified by the circumstances affecting the travel.

### **3. Single Day Travel**

a. Meals are not eligible for reimbursements on single day travel. This means that when an authorized traveler of the state is in travel status where no overnight stay is required, no meals are eligible for reimbursement. Each department head or their designees are to determine the reasonableness of when an over night stay is justified.

b. However, the department head will be allowed to authorize single day meal reimbursements on a case-by-case basis or by type(s) of single day travel when it is determined to be in the best interest of the department. In those cases the department must keep the approvals in the travel file and must be responsible to take appropriate steps to report the reimbursement as wages to the employee.

c. If a department head or their designee determines that single day meals will be provided for, they must follow the following allowances.

i The maximum allowance for meal reimbursement for single day travel will be \$30.

(a). **Breakfast and Lunch: (\$20)** The 12 hours travel duration must begin at or before 6 a.m.

(b). **Lunch: (\$12)** Requires 12 hours duration in travel status.

(c). **Lunch and Dinner: (\$30)** The 12 hour travel duration must end at or after 8 p.m.

4. **Travel with Over Night Stay.** Travelers may be reimbursed for meals according to the following schedule.

a. **Breakfast**—When travel begins at/or before 6 a.m. on the first day of travel or extends beyond 9 a.m. on the last day of travel, or for any intervening days.

b. **Lunch**—When travel begins at/or before 10 a.m. on the first day of travel or extends beyond 2 p.m. on the last day of travel, or for any intervening days.

c. **Dinner**—When travel begins at/or before 4 p.m. on the first day of travel or extends beyond 8 p.m. on the last day of travel, or for any intervening days.

5. **Alcohol**—reimbursement for alcohol is prohibited.

### **B. Exceptions**

1. **Routine Lodging Overage Allowances** (Receipts required). Department head or his designee have the authority to approve actual costs for routine lodging provisions on a case by case basis, not to exceed 50 percent over PPM-49 current listed rates. Justification must be maintained in the file to show that attempts were made with hotels in the area to receive the state/best rate. In areas where the governor has declared an emergency, a department head or his/her designee will have the authority to approve actual routine and conference lodging provisions on a case by case basis not to exceed 75 percent over PPM-49 current listed rates. Each case must be fully documented as to necessity (e.g., proximity to meeting place) and cost effectiveness of alternative options. Documentation must be readily available in the department's travel reimbursement files.

2. **Actual Expenses for State Officers** (Receipts or other supporting documents are required for each item claimed). State officers and others so authorized by statute (see definition under *state officer*) or individual exception will be reimbursed on an actual expense basis for meals and lodging except in cases where other provisions for reimbursement have been made by statute. Request shall not be extravagant and will be reasonable in relation to the purpose of travel. State officers entitled to actual expense reimbursements are only exempt from meals and lodging rates; they are subject to the time frames and all other requirements as listed in the travel regulations.

### **C. Meals and Lodging Allowances**

1. **Meal Allowance**—includes Tax and Tips. Receipts are not required for routine meals within these allowances. Number of meals claimed must be shown on travel voucher. For meal rates, the inclusion of suburbs (see definition of *suburb*) shall be determined by the department head on a case-by-case basis. See tier pricing below. Partial meals such as continental breakfasts or airline meals are not considered meals. If meals of state officials on actual exceed these allowances, receipts are required.

2. **Routine Lodging Allowance.** Employees will be reimbursed lodging rate, plus tax and any mandatory surcharge. (Receipts are required) For lodging rates, the inclusion of suburbs (see definition of *suburb*) shall be determined by the department head on a case-by-case basis. When two or more employees on official state business share a lodging room, the state will reimburse the actual cost of the room; subject to a maximum amount allowed for an individual traveler times the number of employees. Department head approval must be provided to allow lodging expenses to be direct billed to an agency.

3. **Conference Lodging Allowance.** Employees will be reimbursed lodging rate, plus tax and any mandatory surcharge. (Receipts are required) Department head or his designee have the authority to approve the actual cost of conference lodging, for a single occupancy standard room, when the traveler is staying at the designated conference hotel. If there are multiple designated conference hotels, the lowest designated conference hotel should be utilized, if

available. In the event the designated conference hotel(s) have no room availability, a department head may approve to pay actual hotel cost not to exceed the conference lodging rates for other hotels located near the conference hotel. This allowance does not include agency hosted conference lodging allowances; see §1510 for these allowances.

4. No reimbursements are allowed for functions not relating to a conference, i.e., tours, dances, golf tournaments, etc.

TIER I	
Breakfast	\$8
Lunch	\$12
Dinner	\$18
Total	\$38
Lodging Area	Routine Lodging
In-State Cities (except as listed)	\$70
Baton Rouge-EBR	\$101
Covington/Slidell-St. Tammany	\$96
Lake Charles-Calcasieu	\$80
Lafayette	\$86

TIER II	
Breakfast	\$10
Lunch	\$14
Dinner	\$24
Total	\$48
Lodging Area	Routine Lodging
New Orleans -Orleans, St. Bernard, Jefferson and Plaquemines Parishes (July 1-Sept.30)	\$101
New Orleans - Orleans, St. Bernard, Jefferson and Plaquemines Parishes (Oct 1- June30)	\$140
Out-Of-State (Except Cities Listed in Tier III & IV)	\$85

TIER III	
Breakfast	\$12
Lunch	\$16
Dinner	\$24
Total	\$52
Lodging Area	Routine Lodging
Austin, TX; Atlanta, GA; Cleveland, OH; Dallas/Fort Worth, TX; Denver, CO; Detroit, MI; Ft. Lauderdale, FL; Galveston, TX; Hartford, CT; Houston, TX; Kansas City, MO; Las Vegas, NV; Los Angeles, CA; Miami, FL; Minneapolis/St. Paul, MN; Nashville, TN; Oakland, CA; Orlando, FL; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Portland, ME; Portland, OR, Sacramento, CA; San Antonio, TX; San Diego, CA; St. Louis, MO; Tampa, FL; Wilmington, DE; all of Alaska or Hawaii; Puerto Rico; Virgin Island; American Samoa; Guam	\$135

TIER IV	
Breakfast	\$13
Lunch	\$18
Dinner	\$29
Total	\$60

Lodging Area	Routine Lodging
Baltimore, MD; San Francisco, CA; Seattle, WA	\$175
Alexandria, VA; Arlington, VA; Boston, MA; New York City, NY; Washington DC	\$225
Chicago, IL and International Cities	\$200

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1256 (June 2000), LR 27:807 (June 2001), repromulgated LR 27:1495 (September 2001), LR 28:1130 (June 2002), LR 30:1116 (June 2004 LR 31:1189 (June 2005), LR 32:939 (June 2006), LR 33:967 (June 2007), repromulgated LR 33:1320 (July 2007), amended LR 34:1305 (July 2008), LR 35:1198 (July 2009), repromulgated LR 36:157 (January 2010).

### §1507. Parking and Related Parking Expenses

A. Parking at the Baton Rouge Airport. The state's current contract rate is \$3.50 per day (no receipts required) for parking in the indoor parking garage as well as the outside, fenced parking lot at the airport. Documentation required to receive the contract price is either a parking coupon, State ID or a travel itinerary issued by the state contracted travel agency designating the employee is on "official state business". At the agency discretion an employee may be paid actual expenses up to \$5 per day with a receipt.

B. Parking at the New Orleans Airport. The state's current contract rate is \$6 per day and \$36 weekly at Park 'N Fly (no receipts required). Documentation required to receive the contract price is your agency issued photo I.D., a business card, state issued corporate card or a travel itinerary issued by the state contracted travel agency designating the employee is on "official state business". At the agency discretion an employee may be paid actual expenses up to \$8 per day with a receipt.

C. Travelers using motor vehicles on official state business will be reimbursed for reasonable storage fees, for all other parking, including airport parking except as listed in Subsections A and B above, ferry fares, and road and bridge tolls. For each transaction over \$5, a receipt is required.

D. Tips for valet parking not to exceed, \$2 per day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1257 (June 2000), LR 27:808 (June 2001), repromulgated LR 27:1496 (September 2001), repromulgated LR 27:1496 September 2001, LR 28:1130 (June 2002), LR 30:1117 (June 2004), LR 31:1190 (June 2005), LR 33:968 (June 2007), repromulgated LR 33:1321 (July 2007), amended LR 34:1307 (July 2008), LR 35:1200 (July 2009), repromulgated LR 36:158 (January 2010).

**§1508. Reimbursement for Other Expenses (These charges are while in travel status only.)**

A. The following expenses incidental to travel may be reimbursed:

1. Communications Expenses

a. For official state business—all costs (receipts required for over \$3).

b. For domestic overnight travel—up to \$3 in personal calls upon arrival at each destination and up to \$3 for personal calls every second night after the first night if the travel extends several days.

c. For international travel—up to \$10 in personal calls upon arrival at each destination and up to \$10 for personal calls every second night after the first night if the travel extends several days.

d. Internet access charges for official state business from hotels or other travel locations are treated the same as business telephone charges. A department may implement a stricter policy for reimbursement of Internet charges. (Receipts required)

B. Charges for Storage and Handling of State Equipment (Receipts required)

C. Baggage Tips

1. Hotel Allowances—not to exceed \$3 tip per hotel check-in and \$3 tip per hotel checkout, if applicable.

2. Airport Allowances—not to exceed \$3 tip for airport outbound departure trip and \$3 tip for inbound departure trip.

D. Luggage Allowances (Receipt Required). A department head or his designee may approve reimbursement to a traveler for airline charges for first checked bag for a business trip of five days or less and for a second bag for a 6-10 day business trip and/or any additional baggage which is business related and required by the department. The traveler must present a receipt to substantiate these charges.

1. Travelers will be reimbursed for excess baggage charges (overweight baggage) only in the following circumstances:

a. when traveling with heavy or bulky materials or equipment necessary for business;

b. the excess baggage consists of organization records or property.

E. Registration fees at conferences (meals that are a designated integral part of the conference may be reimbursed on an actual expense basis with prior approval by the department head).

F. Laundry Services. Employees on travel for more than 7 days up to 14 days are eligible for \$20 of laundry services, and for more than 14 days up to 21 days an additional \$20 of laundry services, and so on. Receipts are required for reimbursement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:808 (June 2001), LR 28:1131 (June 2002), LR 30:1118 (June 2004), LR 31:1190 (June 2005), LR 32:941 (June 2006), repromulgated LR 33:1322 (July 2007), amended LR 34:1307 (July

2008), LR 35:1200 (July 2009), repromulgated LR 36:159 (January 2010).

**§1509. Special Meals**

A. Reimbursement designed for those occasions when, as a matter of extraordinary courtesy or necessity, it is appropriate and in the best interest of the state to use public funds for provision of a meal to a person who is not otherwise eligible for such reimbursement and where reimbursement is not available from another source.

1. Visiting dignitaries or executive-level persons from other governmental units, and persons providing identified gratuity services to the state. This explicitly does not include normal visits, meetings, reviews, etc., by federal or local representatives.

2. Extraordinary situations are when state employees are required by their supervisor to work more than a 12-hour weekday or 6-hour weekend (when such are not normal working hours to meet crucial deadlines or to handle emergencies).

B. All special meals must have prior approval from the Commissioner of Administration or, for Higher Education, the entity head or his designee in order to be reimbursed, unless specific authority for approval has been delegated to a department head for a period not to exceed one fiscal year with the exception in Subsection C, as follows.

C. A department head may authorize a special meal within allowable rates listed under Meals—Tier 1, to be served in conjunction with a working meeting of departmental staff.

D. In such cases, the department will report on a semi-annual basis to the Commissioner of Administration all special meal reimbursements made during the previous six months. For Higher Education, these reports should be sent to the respective Institution of Higher Education management board. These reports must include, for each special meal, the name and title of the person receiving reimbursement, the name and title of each recipient, the cost of each meal and an explanation as to why the meal was in the best interest of the state. Renewal of such delegation will depend upon a review of all special meals authorized and paid during the period. Request to the commissioner for special meal authorization must include, under signature of the department head:

1. name and position/title of the state officer or employee requesting authority to incur expenses and assuming responsibility for such;

2. clear justification of the necessity and appropriateness of the request;

3. names, official titles or affiliations of all persons for whom reimbursement of meal expenses is being requested;

4. statement that allowances for meal reimbursement according to these regulations will be followed unless specific approval is received from the Commissioner of Administrator to exceed this reimbursement limitation;

a. all of the following must be reviewed and approved by the department head or their designee prior to reimbursement:

i detailed breakdown of all expenses incurred, with appropriate receipts(s);

ii. subtraction of cost of any alcoholic beverages;

iii. copy of prior written approval from the Commissioner of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 30:1118 (June 2004), LR 31:1191 (June 2005), repromulgated LR 1322 (July 2007), amended LR 34:1307 (July 2008), LR 35:1200 (July 2009), repromulgated LR 36:159 (January 2010).

**§1510. Agency Hosted Conferences**

A. State Sponsored Conferences. An agency must solicit three competitive quotes in accordance with the governor's Executive Order for small purchase.

B. Conference Lunch Allowance. Lunch direct billed to an agency in conjunction with an in-state sponsored conference is to be within the following rates plus mandated gratuity.

Lunch In-State excluding New Orleans	\$20
Lunch—New Orleans	\$25

Any other meals require special approval in accordance with PPM49 §1509. Special meal must have prior approval from the Commissioner of Administration.

C. Conference Refreshment Allowance. Cost for break allowances for meeting, conference or convention are to be within the following rates.

1. Catering—served on properties where catering is not required: not to exceed \$2 per person, per morning and/or afternoon sessions.

2. Catering—served on properties that require catered services: not to exceed \$4.50 plus mandated gratuity per person, per morning and/or afternoon sessions.

D. Conference Lodging Allowances. Lodging rates may not exceed \$20 above the current listed routine lodging rates listed for the area in which the conference is being held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1256 (June 2000), LR 27:807 (June 2001), repromulgated LR 27:1495 (September 2001), LR 28:1130 (June 2002), LR 30:1116 (June 2004), LR 31:1191 (June 2005), LR 32:941 (June 2006), repromulgated LR 33:1323

(July 2007), amended LR 34:1308 (July 2008), LR 35:1201 (July 2009), repromulgated LR 36:160 (January 2010).

**§1511. International Travel**

A. International travel must be approved by the Commissioner of Administration or, for Higher Education, the entity head or his designee prior to departure, unless specific authority for approval has been delegated to a department head. Requests for approval must be accompanied by a detailed account of expected expenditures (such as room rate/date, meals, local transportation, etc.), and an assessment of the adequacy of this source to meet such expenditures without curtailing subsequent travel plans.

B. International travelers will be reimbursed the Tier IV area rates for meals and lodging, unless U.S. State Department rates are requested and authorized by the Commissioner of Administration prior to departure. Itemized receipts are required for reimbursement of meals and lodging claimed at the U.S. State Department rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 30:1119 (June 2004), LR 31:1192 (June 2005), repromulgated LR 33:1323 (July 2007), amended LR 34:1308 (July 2008), LR 35:1201 (July 2009), repromulgated LR 36:160 (January 2010).

**§1512. Waivers**

A. The Commissioner of Administration may waive in writing any provision in these regulations when the best interest of the state will be served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1259 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 30:1119 (June 2004), LR 31:1192 (June 2005), repromulgated LR 33:1323 (July 2007), amended LR 34:1308 (July 2008), repromulgated LR 35:1202 (July 2009), LR 36:160 (January 2010).

Angele Davis  
Commissioner

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

#### Landscape Architect Registration Exam

The next landscape architect registration examination will be given June 7-8, 2010, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates:	February 19, 2010
Re-Take Candidates:	March 12, 2010
Reciprocity Candidates:	April 23, 2010

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to March 12, 2010. Questions may be directed to (225) 952-8100.

Mike Strain, DVM  
Commissioner

1001#074

## POTPOURRI

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

#### Technical Review of Working Drafts of Waste Permits (1001Pot1)

The Office of Environmental Services, Waste Permits Division (WPD), has established a procedure for technical review of the working draft of a proposed permit by facility representatives and other Divisions within DEQ. The technical review will take place after the working draft of the proposed permit has been developed and initially reviewed (but not approved) by the supervisor. The procedure will standardize the timing and duration of the review and also provide clear information in the public record regarding the review and the WPD's responses to the review. As part of the procedure, a Worksheet for Technical Review of the Working Draft of the Proposed Permit has been developed. The completed form will become part of the public record for each proposed permit and will be available for public review during the public comment period. Additionally, the public notice for the proposed permit will contain a statement indicating whether or not the proposed permit was changed as a result of the technical review.

The procedure provides the facility an opportunity to clarify items early in the process. Internal DEQ stakeholders,

specifically inspectors, are also provided an opportunity to address issues at the facility. During the subsequent review process, DEQ management will be provided an opportunity to view facility remarks, thereby allowing the permitting authority to be made aware of and consider key issues. Through this procedure the public and EPA are made specifically aware that the facility reviewed the working draft of the proposed permit very early in the process and may review the facility's concerns as well as the WPD's response.

The procedure shall become effective March 1, 2010. Proposed permits in development on the effective date of the procedure and those developed after the effective date will be processed using this review procedure.

For further information, contact Cheryl Sonnier Nolan, Office of Environmental Services, Waste Permits Division, at 225-219-3010 or cheryl.nolan@la.gov.

Herman Robinson, CPM  
Executive Counsel

1001#037

## POTPOURRI

### Office of the Governor Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River

Public Hearing—Substantive Changes to Proposed Rules  
(LAC 46:LXX.6107, 6206, 6209  
6308, 6310, 6312, and 6502)

The board published a Notice of Intent to promulgate rules and to repeal and reenact its rules in the November 20, 2009 edition of the *Louisiana Register* (LR 35:2604). The notice solicited comments and testimony. As a result of its analysis of the comments and testimony received, the board proposes to amend certain portions of the proposed rules. The proposed rules restate existing rules and will be reenacted for the purpose of codification. New rules are in the public's interest and will promote public safety. The new rules provide more stringent educational and licensing requirements for applicants, clarify the standard of conduct for state commissioned NOBRA pilots, establish recency and education requirements for pilots and establishes a Pilot Development Program. No fiscal or economic impact will result from the amendments proposed in this notice.

#### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

##### Part LXX. River Pilots

#### Subpart 3. Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

##### Chapter 61. General Provisions

##### § 6107. Duties and Responsibilities of Pilots

A. It is the duty and responsibility of pilots to provide for dispatching services and to maintain continuous communications sufficient to accept requests and dispatch

orders for pilotage services 24 hours each day 7 days each week.

B. The pilots shall organize themselves and be available for duty and accept pilotage assignments in accordance with a work rotation schedule.

C. Notwithstanding any sections of these rules, the board reserves the right to compel each and every individual pilot to be available for and accept orders for pilotage assignments in declared emergency situations or in other overriding operational conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

## **Chapter 62. Qualifications and Examination of Pilots**

### **§6206. Licenses/Education/Experience**

A. In addition to the above, an applicant must submit satisfactory proof of the following licensing, education and experience criteria.

1. An applicant must hold at least a current First Class Pilots License, Any Gross Tons, upon the Lower Mississippi River from Chalmette, Louisiana to Baton Rouge Railroad and Highway Bridge at Baton Rouge, Louisiana, including physical, and, at least, either a Master of Steam or Motor Vessels of not more than 1600 Gross Tons; or Master of Towing Vessels; or Chief Mate; or Master Any Gross Tons.

a. Notwithstanding Paragraph A.1 of this Section, an applicant with First Class pilotage from the Industrial Fore Bay, mile marker 92.7 AHP, to the Port Allen Fore Bay, mile marker 228.5 AHP, shall be eligible for selection into the Pilot Development Program. However, an applicant selected for the Pilot Development Program shall be required to obtain First Class pilotage from mile marker 88.0 AHP to Baton Rouge Railroad and Highway Bridge prior to commissioning.

2. An applicant must hold a Bachelors degree from an accredited institution of higher learning.

NOTE: Should the association choose to select entrants into the Pilot Development Program prior to January 1, 2012, applicants who hold at least an associate degree from an accredited institution of higher learning may be presented to the association for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

### **§6209. Pilot Development Program**

A. The Pilot Development Program is a mandatory program administered by the board for all Association selected applicants wherein each applicant must successfully and satisfactorily perform such duties, receive training and instruction, meet required standards, pass examinations and obtain such licensure as determined by the board. The program will last not less than four calendar years and be comprised of an apprentice period and a deputy pilot period. Successful completion of the program is required prior to the board approving the deputy pilot for unrestricted pilot status.

1. The board shall determine the number of selected applicants admitted into the Pilot Development Program at any given time.

#### **B. Apprentice Period**

1. All persons participating in the Pilot Development Program shall successfully complete the apprentice portion of the program designed and administered by the board. The Apprenticeship Period shall last for a period of not less than one calendar year. This Apprentice Period shall include the following:

a. not less than one year of training and instruction prior to commissioning, during which time the apprentice shall accompany state commissioned pilots in the performance of their duties;

b. advanced qualification testing;

c. any necessary license preparation and upgrades; and

d. any other industry related professional development that may be relevant and necessary.

#### **C. Deputy Pilot Period**

1. The Deputy Pilot Period of the Pilot Development Program shall last for a period of not less than three calendar years. The Deputy Pilot Period shall include the following:

a. movement of vessels of particular types and sizes and at times under specific conditions set by the board;

b. training and instruction during which the Deputy Pilot accompanies pilots in the performance of their duties;

c. advanced qualification testing;

d. any necessary license preparation and upgrades;

e. successful completion of licensure and education requirements; and

f. any other industry related professional development that may be relevant and necessary.

#### **D. Time to Complete the Pilot Development Program**

1. The Apprentice Period shall be successfully completed within a timely period unless the board determines that exceptional conditions apply such as illness, injury or limited availability of a necessary resource. Participants who fail to demonstrate satisfactory progress as determined by the board shall be subject to dismissal from the Apprenticeship Program.

2. The Deputy Pilot Period may last up to four years provided the participant is making acceptable progress as determined by the board.

3. The Deputy Pilot Period may be extended up to one additional year after the initial four years at the discretion of the board. If, after the one year extension period, the deputy pilot fails to meet the criteria and standards set by the board, said deputy pilot shall be released from the Pilot Development Program and a recommendation will be made to the governor to have the deputy pilot's state commission revoked.

#### **E. Grounds for Release from the Pilot Development Program**

1. Any program participant who fails to meet the criteria and standards set by the board shall be released from the Pilot Development Program and will not be recommended to the governor for commissioning. If, already commissioned, a recommendation will be made to have the deputy pilot's state commission revoked.

2. Grounds for release from the Pilot Development Program include, but are not limited to:

- a. failure to complete the requirements of any period, stage, segment, license upgrades or educational requirements necessary to progress or complete the program;
- b. recklessness and/or display of lack of judgment;
- c. disregard of state rules, laws, and regulations;
- d. disregard of United States Coast Guard rules and regulations;
- e. lack of fitness for the position and responsibilities of a pilot;
- f. lack of professional integrity, veracity, ability and/or capability; and
- g. any violations of standards of conduct as enumerated in §6307 of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

### **Chapter 63. Standards of Conduct**

#### **§6308. Obligation of Pilots**

A. Obligation of safe pilotage rest entirely with each and every individual state commissioned pilot. When a pilot offers themselves for any pilotage assignment, such pilot certifies and warrants that they are competent, capable and qualified for such assignment and will perform such assignment in compliance with all applicable standards and duties.

B. A pilot who has been ill or injured to the extent that the pilot has been unable to perform pilotage duties for a period of 30 calendar days or longer shall:

1. notify the board, or arrange for it to be notified as soon as possible, after the thirtieth day of the disability; and
2. not resume pilotage duties until the pilot has successfully completed and submitted a Merchant Mariner Physical Examination Report to the board.

C. Before allowing the pilot to return to duty, the board may require the pilot to:

1. submit to an examination, at the board's expense, by a board selected physician;
2. complete a re-orientation program established by the board; and/or
3. appear before the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

#### **§6310. Recency Requirement**

A. The purpose of this rule is to ensure that pilots retain their skills in ship handling and maintain familiarity on the NOBRA route.

B. All pilots shall complete at least 18 turns every six months.

1. Members of the board of directors shall be considered recent by completing six turns or six observer trips every six months.

2. A turn shall be considered a vessel transit of at least 20 miles.

3. Work performed at the VTC shall not be considered as a turn for the purpose of recency. However, a pilot is required to be recent in order to stand watch at the VTC, unless specifically waived by the board for a temporary condition not effecting performance of duty.

4. It is the duty of any pilot who fails to maintain recency to remove themselves from rotation and immediately notify the board.

C. Failure of a pilot to remove themselves from rotation and notify the board shall be deemed a violation of these rules and shall result in an investigation.

D. Before a non-recent pilot is eligible to resume pilotage duty, the pilot shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, a specially designed program to re-orient said pilot to Mississippi River pilotage.

1. Before a non-recent pilot is eligible to resume pilotage duty, the board reserves the right to require the pilot to satisfactorily pass a current United States Coast Guard approved Merchant Mariner Physical Examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

#### **§6312. Mandatory Rest Period**

A. For the purpose of this rule, a turn is the time period from dispatch to the termination of the allotted travel time.

B. All pilots shall have a minimum of eight hours rest period between turns.

C. For the purpose of this rule, the rest period begins at the termination of the allotted travel time at the completion of one turn and ends at the time of dispatching for the next turn.

D. Notwithstanding Subsection B, the captain of the station and shift pilots shall be exempt from the minimum 8 hours rest period in between turns. However, in no case shall the captain of the station and shift pilots exceed 12 bridge hours in any 24 hour period.

E. Notwithstanding Subsection B, any pilot completing a turn lasting less than 4 bridge hours or receiving a discharge, shall not be required to comply with the mandatory 8 hours rest period. However, in no case shall any pilot acquire more than 12 hours in a 24 hour period. Pilots requesting eight hours rest period shall not be called or dispatched in less than 8 hours from the completion of their finishing time.

F. Notwithstanding Subsection B, during a state of declared emergency all pilots shall be exempt from the minimum 8 hours rest period in between turns. However, in no case shall any pilot exceed 12 bridge hours in any 24 hour period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

**Chapter 65. Drug and Alcohol Policy**

**§6502. Definitions**

A. As used in this Chapter:

*Administrative Procedure Act (APA)*—the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

*Alcoholic Beverage*—any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

*Applicant*—any person who submits the written application for admission into the Pilot Development Program.

*Application*—the form supplied by the board to any individual seeking selection into the Pilot Development Program.

*Apprentice*—any person duly selected but not yet commissioned, to serve in the Pilot Development Program.

*Board of Examiners*—Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as established by R.S. 34:1041 et seq.

*NOBRA Pilot or Pilot*—a commissioned Mississippi River pilot for the territory established in R.S. 34:1041 et seq.

*Drug*—any and all controlled dangerous substances as defined in R.S. 40:961(7). Drugs which are illegal under federal, state, or local laws include but are not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited or licensed physician.

*Prescription Medication*—any medication distributed by or with the authorization of a licensed physician, as defined in R.S. 40:961(33).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots LR 28:1794 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

Captain Christopher R. Brown  
President

1001#045

**POTPOURRI**

**Office of the Governor**

**Coastal Protection and Restoration Authority**

Public Hearing—State Fiscal Year 2011 Draft Annual Plan

Pursuant to R.S. 49:214.5.3, the Coastal Protection and Restoration Authority of Louisiana (CPRA) will hold the following public hearings to receive comments and recommendations from the public and from elected officials on Louisiana’s draft “Fiscal Year 2011 Annual Plan: Integrated Ecosystem Restoration and Hurricane Protection in Coastal Louisiana.”

Monday, February 8, 2010 at 3:00pm  
St. Bernard Parish Council Chambers  
8201 W. Judge Perez Drive  
Chalmette, LA 70043

Tuesday, February 9, 2010 at 3:00pm  
Terrebonne Parish Consolidated Government  
Council Chambers  
Government Tower Building  
8026 Main Street  
Houma, LA 70360

Wednesday, February 10, 2010 at 3:00pm  
Lake Charles Civic Center  
900 Lakeshore Drive  
Lake Charles, LA 70601

If, because of a disability, you require special assistance to participate, please contact the Office of Coastal Protection and Restoration, at P.O. Box 44027, Baton Rouge, LA 70804-4027, or by telephone at (225) 342-7308, at least five working days prior to the hearing.

Please visit <http://lacpra.org> for more detailed information and a copy of the draft Annual Plan, which will be posted prior to the meetings.

For questions regarding the meetings, please contact Karim Belhadjali at (225) 342-4123.

Garret Graves  
Chairman

1001#012

**POTPOURRI**

**Department of Health and Hospitals  
Office of Public Health**

**Advanced Notice of Rulemaking and  
Solicitation of Comments**

The Department of Health and Hospitals, Office of Public Health, is currently working on updating Part XIV (Plumbing) of the Louisiana State Sanitary Code (LAC 51:XIV). Currently, Part XIV (Plumbing) is synonymous to the *Louisiana State Plumbing Code*, 2000 Edition. The department is seeking input from interested individuals on any specific changes or clarifications to the current code which assists in ensuring or enhancing the protection of the public’s health. This is a preliminary step in the rulemaking process. Official rulemaking is planned to be initiated after the review and consideration of the comments received in this advance notice. Persons interested in offering any specific changes or clarifications are encouraged to submit their recommendation(s) in writing to Jake Causey, P.E., Engineering Services Section, Center for Environmental Health Services, Office of Public Health, P.O. Box 4489, Baton Rouge, LA 70821-4489. Correspondence should be hand-delivered or delivered by courier to Mr. Causey at 628 N. Fourth St., Room 125, Baton Rouge, LA 70112. You may also fax information to Mr. Causey at (225) 342-7303. The deadline for receipt of all such suggestions is Thursday,

February 4, 2010. Any questions concerning this notice may also be addressed to Mr. Causey via telephone at (225) 342-7499.

Alan Levine  
Secretary

1001#042

**POTPOURRI**  
**Department of Health and Hospitals**  
**Office of Public Health**  
**Center for Environmental Health**

**Request for Public Comment on Louisiana's Fish  
Consumption Advisory Protocol**

The Louisiana Departments of Health and Hospitals (LDHH), Environmental Quality (LDEQ), Wildlife and Fisheries (LDWF), and Agriculture and Forestry (LDAF) issue fish consumption advisories when contaminant levels are of potential concern. The "Protocol for Issuing Public Health Advisories for Chemical Contaminants in Recreationally Caught Fish and Shellfish" is the basis on which these fish consumption limit recommendations are made. This protocol is designed to provide standardized guidelines on issues such as investigation of contaminants in fish tissue, determination of the need for an advisory, and the ultimate interagency consultation.

Recent updates to this protocol have been made. As of January 20, 2010, the LDHH, LDEQ, LDWF, and LDAF are requesting public comment on the updated protocol. Final comments are due to LDHH on March 20, 2010. Comments can be submitted by mail to the address below or by email to adrienne.katner@la.gov. This document is available on the LDHH and LDEQ websites at <http://www.dhh.louisiana.gov/offices/?ID=205> and [www.deq.louisiana.gov](http://www.deq.louisiana.gov). Requests for copies of this document should be directed to:

Louisiana Department of Health and Hospitals  
Office of Public Health  
Section of Environmental Epidemiology and Toxicology  
1450 L&A Road, New Orleans, LA 70001  
(888) 293-7020 (toll free)

Glenn Cambre  
Public Health Executive Director

1001#054

**POTPOURRI**  
**Department of Natural Resources**  
**Office of Conservation**

**Orphaned Oilfield Sites**

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, La. R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Sullivan Well Service	Caddo Pine Island	S	J W Wall Fee	001	24152
Sullivan Well Service	Caddo Pine Island	S	N B Stoer Et Al	001	24882
Sullivan Well Service	Caddo Pine Island	S	Lane-Smallenburger	001	40373
Sullivan Well Service	Caddo Pine Island	S	Lane-Smallenburger	002	40395
Sullivan Well Service	Caddo Pine Island	S	Lane-Smallenburger	003	41337
Sullivan Well Service	Caddo Pine Island	S	Lane-Smallenburger	004	44793
Sullivan Well Service	Caddo Pine Island	S	N B Stoer Et Al	C-2	53318
Sullivan Well Service	Caddo Pine Island	S	N B Stoer Et Al	C-1	54723
Texas Gulf Producing Co	Wildcat-So La New Orleans Dis	L	Dr H L Ballowe	001	50020
Texas Gulf Producing Co	Ragley	L	Herpin Sand Unit 2	001	54853
Woods Oil & Gas Co.	Potash	L	Br Slater	002	47001
Occidental Energy Company	David Haas	L	Haas Land Co	002	148978
Occidental Energy Company	David Haas	L	Haas Land Company Swd	003	149365
Occidental Energy Company	David Haas	L	Haas Land Co	004	150761
Occidental Energy Company	Ruston	S	MCF RA Sum;S B Colvin	001	157139
Occidental Energy Company	Unionville	S	CV Davis RA Su58;Harkins	001	199325
Occidental Energy Company	Unionville	S	CV Davis RA Suf;Frasier	001	207000
Drew Cornell, Inc.-C.H.Lawrence	Cankton, North	L	L Savoie	002	36588(30)
Drew Cornell, Inc.-C.H.Lawrence	Cankton, North	L	L Savoie	004	40882(30)

James H. Welsh  
Commissioner of Conservation

1001#059

**POTPOURRI**  
**Department of Natural Resources**  
**Office of the Secretary**  
**Fishermen's Gear Compensation Fund**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 10 claims in the amount of \$43,882.76 were received for payment during the period December 1, 2009 - December 31, 2009.

There were 9 claims paid and 1 claim denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2904.527	9014.011	Lafourche
2904.905	9053.966	Terrebonne
2908.675	9031.806	Terrebonne
2917.523	8950.679	Plaquemines
2942.002	8946.530	Plaquemines
2951.963	8920.793	St. Bernard
2952.544	9026.352	Terrebonne
3011.134	8955.217	St. Tammany
9002.300	2934.159	Jefferson
9002.300	2934.159	Jefferson

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle  
Secretary

1001#079

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